No. 5660

United States

Circuit Court of Appeals

For the Ninth Circuit.

Transcript of Record.

(IN TWO VOLUMES.)

WALTON N. MOORE DRY GOODS CO., a Corporation, J. H. NEWBAUER & COMPANY, a Corporation, G. W. REYNOLDS CO., INC., a Corporation, and L. DINKELSPIEL CO., INC., a Corporation,

Appellants,

vs.

A. F. LIEURANCE, and PHILLIP A. HERSHEY, as Receivers of R. A. PILCHER CO., INC., a Corporation, Bankrupt,

Appellees.

VOLUME I.

(Pages 1 to 448, Inclusive.)

Upon Appeal from the United States District Court for the Northern District of California, Southern Division.

Filmer Bros. Co. Print. 330 Jackson St., S. F., Cal.

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INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS OF RECORD.

FRANCIS J. HENEY, Flatiron Building, San Francisco, GRANT H. WREN, 444 Market St., San Francisco, C. A. SHUEY, Merchants Exchange Bldg., San Francisco,

Attorneys for Appellants.

EDWARD R. ELIASSEN, Central Bank Bldg., Oakland, CROSBY & CROSBY, Central Bank Bldg., Oakland,

Attorneys for Appellees.

In the United States District Court, in and for the Northern District of California.

(IN EQUITY—No. 1707.)

SIDNEY GILSON, HERMAN AVRUTINE and SAMUEL AVRUTINE, Copartners Engaged in Business as NATIONAL GARMENT CO.,

Complainants,

vs.

R. A. PILCHER CO., INC.,

Defendant.

PETITION OF A. F. LIEURANCE FOR ANCILLARY PROCEEDINGS AND FOR ORDER APPOINTING HIM AND ARTHUR F. GOTTHOLD RECEIVERS.

To the Honorable, A. F. ST. SURE, Judge of the United States District Court in and for the Northern District of California:

The petition of A. F. Lieurance of Oakland, California, appearing by Edward R. Eliassen, Esq., his attorney, respectfully shows:

I.

That the defendant, R. A. Pilcher Co., Inc., is a corporation organized and existing under and by virtue of the laws of the State of Delaware, and having its office and principal place of business at the city of New York, State of New York.

II.

That the above-named plaintiffs are creditors of the R. A. Pilcher Co., Inc., so your petitioner is informed and verily believes, and that on or about the 3d day of June, 1926, the said plaintiffs commenced the above-entitled proceeding and filed their bill of complaint therein in the United States District Court in and for the Southern District of New York, entitled—Sidney Gilson, Herman [1*] Avrutine and Samuel Avrutine, copartners, engaged in business as National Garment Co., Complainants,

*Page-number appearing at the foot of page of original certified Transcript of Record.

against R. A. Pilcher Co., Inc., Defendant, (In Equity—No. 37—146)", wherein the said plaintiffs alleged the necessity for the purpose of conserving the estate of the said defendant and the property thereof for the creditors and for the purpose of obtaining an order which, in effect, would prevent the institution of any bankruptcy proceedings for the time being; and that thereafter and on or about the 3d day of June, 1926, so petitioner is informed and verily believes, an answer was filed on behalf of R. A. Pilcher Co., Inc., defendant, in the said proceeding in the city of New York, and that thereafter and on or about the 3d day of June, 1926, after proceedings, duly had and taken in the premises in the said proceeding then pending in the United States District Court in and for the Southern District of New York entitled "Sidney Gilson, Herman Avrutine and Samuel Avrutine, copartners engaged in business as National Garment Co., Complainants, against R. A. Pilcher Co., Inc., Defendant, (In Equity—37—146)" and the said Court, the Honorable Augustus N. Hand presiding, made its order and decree appointing your petitioner, A. F. Lieurance and Arthur F. Gotthold, the Receivers of the above named defendant R. A. Pilcher Co., Inc., and authorizing and directing them to take possession of all the property and effects of the said R. A. Pilcher Co., Inc., wherever situate and do and perform all other things and acts as in said order set out, a true and correct copy of which said order is hereto attached and made a part hereof and specifically referred to. And the said A. F.

Lieurance and Arthur F. Gotthold in compliance [2] with said order did each of them file in the said United States District Court, Southern Division of New York a good and sufficient Surety Company bond in the sum of Ten Thousand ($10,000) Dollars, and did thereupon qualify as such Receivers and that they ever since have been and now are the duly appointed qualified and acting Receivers of R. A. Pilcher Co., Inc.

III.

That the said R. A. Pilcher Co., Inc., is engaged in the Merchandise Business and has been and now is maintaining and conducting stores in the cities of Stockton, Turlock, and Oroville in the State of California and within the jurisdiction of the United States District Court in and for the Northern District of California.

IV.

That several attachment suits have been filed against the aforementioned defendant and attachments levied against the property of the defendant contained in said stores and against moneys on deposit in banks belonging to said stores and to said defendant which require the immediate attention of the said Receivers for the purpose of preserving and protecting the assets and property of the said defendant R. A. Pilcher Co., Inc., in accordance with the order of June 3, 1926.

V.

That by the order of June 3, 1926, hereinabove

referred to, your petitioner and the said Arthur F. Gotthold, as Receivers, were authorized to institute ancillary proceedings in all State and Federal Courts and that it is necessary and proper that A. F. Lieurance and Arthur F. Gotthold, Receivers, appointed by the said New York court, be appointed Receivers in the premises by the above-entitled court and that ancillary proceedings be instituted herein for the purpose of the preservation of the estate and [3] property and effects of the said defendant and that ancillary Receivers be appointed herein.

VI.

That it is the purpose of the Receivers to continue the operation of the aforementioned business for the time being and that for the purpose of supplying the aforementioned stores and other stores of defendant corporation situate in the States of Oregon and Washington with the necessary merchandise, the said Arthur F. Gotthold, as Receiver, has arranged to borrow sufficient money upon receivers' certificates, the said certificates to be pledged by merchandise of the said corporation, and that for such purpose in the premises it will be necessary to obtain an order of the above-entitled court permitting the said Receivers to issue such certificates and to borrow money thereon and to pledge the assets of the defendant corporation as security for the said certificates, and that in addition to said fact, the institution of ancillary proceedings is warranted for the reason that it is desirable and may be necessary to have process issued in such

proceeding for the purpose of the attendance and examination of witnesses and of books and papers and for the purpose of enforcing any other right that may be necessary in the administration of the above-entitled estate within the jurisdiction of the above-entitled court for the purpose of maintaining and conducting the said business within said jurisdiction and preserving the estate for the benefit of all creditors and for the defendant corporation.

WHEREFORE: Your petitioner, A. F. Lieurance, as Receiver, respectfully petitions the above-entitled court [4] for an order of ancillary proceedings herein and in aid of the said A. F. Lieurance and Arthur F. Gotthold as Receivers; and for an order appointing them, the said A. F. Lieurance and Arthur F. Gotthold, Receivers of R. A. Pilcher Co., Inc., within the jurisdiction of the above-entitled court, and authorizing and empowering them and each of them to act as such Receivers and do any and all things authorized by the aforementioned order of June 3, 1926, made by the United States District Court in and for the Southern District of New York in the above-entitled proceeding; and for such other and further relief in the premises as to the Court may seem meet, just and equitable.

A. F. LIEURANCE,
Petitioner.

EDWARD R. ELIASSEN,
Attorney for Petitioner, Central Bank Building, Oakland, California. [5]

State of California,
County of Alameda,—ss.

A. F. Lieurance, being first duly sworn, deposes and says: That he is the petitioner in the above-entitled proceeding and that he has read and signed the foregoing petition; that the matters therein stated are true of his own knowledge, except as to the matters which are therein stated upon his information and belief, and as to those matters that he believes it to be true.

A. F. LIEURANCE.

Subscribed and sworn to before me this 9th day of June, 1926.

EDWARD R. ELIASSEN,
Notary Public in and for the County of Alameda, State of California. [6]

United States District Court, Southern District of New York.

IN EQUITY—37-146.)

SIDNEY GILSON, HERMAN AVRUTINE and SAMUEL AVRUTINE, Copartners Engaged in Business as NATIONAL GARMENT CO.,

Complainants,

against

R. A. PILCHER CO., INC.,

Defendant.

ORDER APPOINTING RECEIVER.

And now on this 3d day of June, 1926, this cause came on to be heard upon the bill of complaint duly filed herein, and the answer of the defendant hereto this day likewise filed, and upon a motion of the plaintiff for the appointment of a Receiver, and after hearing Irving L. Ernst, of counsel, representing the complainant, and after due deliberation, it is adjudged that the complainant upon the facts contained in the said bill and upon said answer is entitled to the relief hereby granted, and it is

On motion of McManus, Ernst & Ernst, attorneys for the complainant,

ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

That Arthur F. Gotthold of the city of New York and A. F. Lieurance of Oakland, California, be and they hereby are appointed temporary Receivers of the above-named defendant and all of the property, assets and effects of said defendant, or in which the said defendant has any ownership or interest, whether such property be real, personal and mixed and of whatsoever kind and description and wheresoever situate, and of all office furniture, fixtures, books of account, records and other books, papers and accounts, [7] cash on hand or in bank or on deposit, things in action, credits, stocks, bonds, securities, shares of stock, notes or bills receivable, muniments of title, as well as all other property of

every character and description whatsoever of the defendant, and it is further

ORDERED, ADJUDGED AND DECREED that the said Receivers be and they are hereby authorized forthwith to take possession and control and custody of all said property, assets and effects of said defendants; that said Receivers are authorized to do all and any things and enter into all or any agreements as may be deemed by them necessary or advisable to preserve and protect the said property or assets; in their discretion to employ and discharge and to fix the compensation of such officers, agents, and employees as may, in their judgment, be necessary or advisable in the administration of this estate; to employ accountants and counsel, and to make such payments and disbursements as may be needful or proper in the preservation of the assets of the defendant.

Said Receivers are further authorized and empowered to institute, prosecute, defend, compromise, adjust, intervene in or become party to such suits, actions or proceedings at law or in equity including ancillary proceedings in state or federal courts, as may in their judgment be necessary or proper for the protection and preservation of the assets of the defendant or the carrying out of the terms of this decree, and likewise to defend, compromise or adjust, or otherwise dispose of all or any suits, actions or proceedings now pending in any court by or against the said defendant where such prosecution, compromise, defense [8] or other disposition of such suit or action will in the judgment of said Re-

ceivers be advisable or proper for the protection of the assets of the above-named defendants, and such Receivers are authorized to settle with, compromise, collect from or make allowance to debtors of the above-named defendant; to enter into such arrangements, compositions, extension or otherwise with debtors of the defendant as the said Receivers may deem advisable; and generally said Receivers are authorized to do all acts, enter into any agreements and accept, adopt or abandon any or all contracts as may be deemed by such Receivers advisable for the protection or preservation of the assets of the above-named defendant. And it is further

ORDERED that the bonds of the said Receivers in the sum of ten thousand dollars each conditioned that he will well and truly perform the duties of his office and duly account for all moneys and property which come into his hands and abide by and perform all things which he shall be directed to do, with sufficient sureties to be approved by a judge of this Court, be filed with the Clerk of this court within two (2) days from the date of this order. And it is further

ORDERED, ADJUDGED AND DECREED that said defendant, its officers and directors, agents and employees, and all other persons claiming to act by, through or under or for said defendant, and all other persons, firms and corporations including creditors of the defendant, and including all sheriffs, marshals, constables and their agents, and deputies, and all other officers are hereby enjoined from transferring, removing, disposing of or attempting in any

way to remove, transfer or dispose of or in any way [9] interfere with any of the properties owned by or in the possession of said defendant, and all said persons, firms and corporations are enjoined from doing any act whatsoever to interfere with the possession and management by said Receivers of the properties of the defendant, or in any way to interfere with the said Receivers in the discharge of their duties, or to interfere in any way with the administration and disposition in this suit of the affairs and properties of the defendant, and all creditors of the said defendant are hereby enjoined from instituting or prosecuting or continuing the prosecution of any pending actions, suits or proceedings at law or in equity, or under any statute against the said defendant, and from levying any attachments, executions or other processes, upon or against any of the properties of the said defendant, or from taking or attempting to take into their possession any of the properties of the said defendant, and from issuing or causing the execution or issuance out of any court of any writ, process, summons, subpoena, replevin or attachment, and it is further

DECREED that the Receivers be and they hereby are directed within thirty (30) days from the date of this decree, to cause to be mailed to each and every creditor of the defendant known to such Receivers, a copy of this order and a notice of a motion to make the receivership herein permanent, such mailing to be in a securely sealed envelope, postage prepaid, and to be addressed to said credi-

tor at the last postoffice address known to the said Receivers and such service by mail is hereby decreed to be due, timely, sufficient and complete service of notice of this decree and this suit and of such notice and all proceedings had or to be had herein and upon all such creditors for all purposes. And it is further [10]

DECREED that all such creditors of the defendant be, and they hereby are directed to file with the Receivers or any permanent Receivers at such office or place of business as said Receivers may designate at within ninety (90) days from the date of this order, a duly sworn statement of all or any such claims as they such creditors, may have or assert against the defendant, and such statement shall be verified before any officer authorized to administer oaths by the laws of the state where such claim is verified and such statements of said claims shall, where the same is evidenced by any written instrument, have such written instrument attached thereto. And it is further

DECREED that notice of the time and place for the filing of the said claim shall be published at least four times before the expiration of said period of ninety (90) days in the "New York Times." And it is further

DECREED that all such creditors as shall fail to file their claims with said Receivers as herein provided, and within the time fixed, shall be debarred from any share of, in or to, the properties of the said defendant, and shall not be entitled to

receive any share thereof, or of the proceeds thereof. And it is further

DECREED that the Receivers shall have leave to apply for such other or further orders as may to them from time to time seem advisable or necessary in the adminisration of this estate.

AUGUSTUS N. HAND,
U. S. D. J.

A true copy.

[Seal] ALEX GILCHRIST, Jr.,
Clerk.

[Endorsed]: Filed June 9, 1926. [11]

The President of the United States of America, to All to Whom These Presents Shall Come, GREETING:

KNOW YE, That we having inspected the records and files of the District Court of the United States for the Southern District of New York, do find certain paper writings there, remaining of record, in the words and figures following, to wit: [12]

United States District Court, Southern District of New York.

E.–37—146.

SIDNEY GILSON, HERMAN AVRUTINE and SAMUEL AVRUTINE, Co-partners Engaged in Business as NATIONAL GARMENT CO.,

Complainants,

against

R. A. PILCHER CO., INC.,

Defendant.

BILL OF COMPLAINT.

To the Honorable District Court of the United States, for the Southern District of New York:

The complainants above named, by McManus, Ernst & Ernst, for a bill of complaint herein, allege and show to this Honorable Court:

First. The complainants and all of them were at all the times herein mentioned and now are residents and citizens of the Borough of Manhattan, city of New York, which is in the Southern District of the State of New York, and are copartners engaged in business under the name and style of National Garment Co. at No. 501–7th Avenue, Borough of Manhattan, city of New York, and bring this bill of complaint on their own behalf and on behalf of all creditors of the defendant.

Second. The defendant is a corporation duly organized and existing under and by virtue of the

laws of the State of Delaware, having its principal legal office and place for the transaction of its business at the city of Wilmington, in the State of Delaware, and is a resident of the State of Delaware; but the defendant has and maintains its principal business and financial office in the [13] city of New York, State of New York, in the Southern District of New York.

Third. The defendant is engaged in operating a chain of department stores, in which it sells articles of such a nature usually sold in department stores carrying an inventory consisting of a wide range of articles of apparel and general utility, and defendant now operates in the states on or adjacent to the west coast of the United States sixteen (16) such department stores.

Fourth. By reason of too quick and large an expansion and an overstocking of merchandise, with too small a cash capital to meet the requirements of the business, the defendant is unable to meet its maturing obligations although the business is progressing favorably, the stores well located and well stocked with seasonable merchandise.

Fifth. The defendant is indebted to the complainant in the sum of Nine Thousand Six Hundred Seven and 10/100 Dollars ($9,607.10) for merchandise sold and delivered by the complainant to the defendant, which sum is now due and payable, but which sum the defendant has been unable to pay because it has not the ready cash available therefor.

Sixth. Upon information and belief, the defendant is indebted to various other creditors for money

borrowed for merchandise sold and delivered to the defendant and for accounts payable, in the aggregate sum of approximately Seven Hundred Thousand Dollars ($700,000.).

Seventh. Upon information and belief, the defendant is without sufficient funds to meet its present obligations, some of which are long past due, although the defendant has assets sufficient to cover its said obligations [14] and a substantial surplus if said assets can be liquidated in the usual and ordinary course of business, but not through a forced attachment, execution or foreclosure sale.

Eighth. Upon information and belief, the defendant is in possession of assets of a reasonable value of approximately Nine Hundred and Fifteen Thousand Dollars ($915,000.) consisting of seasonable merchandise at cost price of Seven Hundred Thousand Dollars ($700,000.); fixtures and leaseholds, One Hundred and Forty Thousand Dollars ($140,000.); and accounts receivable and money in banks, Seventy-five Thousand Dollars ($75,000.).

Ninth. Upon information and belief, various of the creditors of the defendant are pressing their claims for judgment and many suits have been commenced by small creditors in New York and elsewhere, who have attached, or who threaten to attach the property of the defendant, and such suits may result in a forced sale of the property and assets of the defendant, or some part thereof, which forced sales would result in hardship and damage to the complainant and the other large creditors, as well as the defendant.

Tenth. Upon information and belief, the defendant is now conducting a large and progressive business; that its sales approximate One Hundred Sixty Thousand Dollars ($160,000) a month; but that its capital is inadequate for so large a business until the inventory of merchandise which it has on hand and which was purchased for last winter's business, but cannot be sold until late summer or fall of this year, is moved.

Eleventh. Upon information and belief, the complainant avers that if the defendant's assets are not taken into judicial custody, inequitable preferences against the [15] complainant and other creditors might result, and unless all actions and proceedings at law, including executions, attachments and other proceedings are enjoined, there will be a serious dissipation of the assets of the defendant.

Twelfth. In order that the property of the defendant may be preserved for equitable distribution among those entitled thereto, the complainant believes that this Honorable Court should intervene and appoint a Receiver to take charge of all of the assets of the defendant, who shall conduct, manage and administer the same under the power to be conferred upon him in the proposed decree herewith submitted.

Thirteenth. Your complainant shows that the amount of the recovery in this suit is in excess of Three Thousand Dollars ($3,000) exclusive of interest and costs.

Fourteenth. Inasmuch therefore as your com-

plainant has no adequate remedy at law, and can have relief only in equity, your complainant files this bill of complaint in behalf of itself and other creditors of the defendant, who may thereafter join herein, and prays for equitable relief, as follows:

1. That this Honorable Court will administer all the properties, assets and effects, rights and business belonging to the defendant, and will adjudicate, enforce, adjust and determine the rights, equities and claims of all the creditors of the defendant, including the claim of your complainant.

2. That this Honorable Court will forthwith appoint a Receiver or Receivers of all and singular the property of the defendant, of whatsoever nature, with full [16] power to take into their possession, hold and manage the same under the direction of this Court with such powers as this Court may from time to time grant; to continue the business, in his or their discretion, to bring suit for, collect, receive and take into their possession all of the property and assets of the defendant including books, records, vouchers, cheques, moneys, real estate and all other property, real, personal or mixed; to institute, prosecute or defend any actions at law or in equity or under any statute for the recovery, protection and maintenance of any of the assets or properties of the defendant, as they may deem necessary or proper, including the institution and prosecution of any such ancillary proceedings as they may deem advisable; to settle, collect, compound, adjust or make allowances upon any debts that may be due or owing to the defendant as they

may deem proper; to pay any such claims, wages or otherwise, as may have priority; and, in general, with all the usual powers of Receivers in such cases.

3. That the officers, managers, employees, creditors and stockholders of the defendant and all other persons, firms and corporations be required forthwith to transfer, convey and deliver up to such Receiver or Receivers possession of all property of the defendant wheresoever situate.

4. That all persons, firms and corporations, be enjoined from instituting, commencing, prosecution or continuing the prosecution of any actions, suits or proceedings at law or in equity, or under any statute against defendant, or from levying or serving any attachments or executions or other processes upon the defendant or upon [17] or against any of the property of the said defendant, save and except the filing of mechanic's lien or other statutory liens, and generally that all persons, firms and corporations be enjoined from doing any act to interfere with said Receivers in their possession of the property of the defendant.

5. That a writ of injunction issue out of and under the seal of this Honorable Court, or issue by one of your Honors, directing, enjoining and restraining the defendant and its officers, agents and employees, and all other persons whatsoever from interfering with, transferring, selling or disposing of any of the property of said defendant.

6. That this Honorable Court will grant a writ of subpoena under the seal of this Honorable Court, directed to defendant and commanding it on a date

certain therein named, before this Honorable Court, to answer (but not under oath, answer by oath being expressly waived), all and any of the premises, and to stand by, perform and abide by such orders and decrees as may be made by this Honorable Court.

7. That a decree appointing a Receiver or Receivers of the property of the defendant and granting the relief prayed for in this bill of complaint may be granted by this Honorable Court in the form herewith submitted.

8. That at such time as may be found just and proper the properties of the defendant may be ordered to be sold, in whole or in part, for cash or on credit, in such manner and upon such conditions as this Court may deem just and equitable, and that any such decree of sale shall make proper and equitable provision for the preservation of all equities, rights and properties, claims [18] and liens of all creditors and shall provide for the sale of the property of the defendant subject to or free of liens and encumbrances, in whole or in part, as this Court may direct, and that the proceeds of any such sale be distributed among these entitled thereto, as this Honorable Court shall adjudicate, or that the properties of the defendant, in whole or in part, may be returned to it; and that your Complainant may have such other and further relief in the premises as may be just and equitable, and that the defendant may be directed to make such bills of sale, assignments, transfers and conveyances of any such property as may be directed to be sold by this Court.

9. That such order shall be made by this Hon-

orable Court, as to the service of this bill of complaint and of any order that may be made in this suit as may be deemed sufficient and proper by this Court.

10. That your complainant may have such other and further relief as may be just and proper.

And your complainant will ever pray.

McMANUS, ERNST & ERNST.

McMANUS, ERNST & ERNST,
Solicitors for Complainant, 170 Broadway,
New York City. [19]

State of New York,
County of New York,—ss.

Herman Avrutine being duly sworn, says: That he is one of the complainants above named; that he has read the foregoing bill of complaint and knows the contents thereof, and that the same is true to his own knowledge, except as to matters therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true.

HERMAN AVRUTINE.

Sworn to before me this 2d day of June, 1926.

EMILY SCHOBAUM,
Bronx Co. Clks. No. 199, Reg. No. 2773A. New York County Clks. No. 953. Reg. No. 7721.
Com. expires March 30, 1927. [20]

United States District Court Southern District of New York.

E.–37—146.

SIDNEY GILSON, HERMAN AVRUTINE and SAMUEL AVRUTINE, Copartners Engaged in Business as NATIONAL GARMENT Co.,

Complainants,

against

R. A. PILCHER CO., INC.,

Defendant.

ANSWER.

AND now comes the defendant herein, by Horwitz, Rosston & Hort, its attorneys, and for an answer to the bill of complaint filed herein, hereby admits each and every allegation contained in the bill of complaint, and joins in the bill of complaint and prays that such decree be made in the promises as may be just and proper and for the full protection of the complainants, the defendant and all creditors of the defendant, and the defendant will ever pray, etc.

HORWITZ, ROSSTON & HORT,
Attorneys for Defendant,

Office and Post Office Address: 141 Broadway, Borough of Manhattan, New York City. [21]

State of New York,
County of New York,—ss.

Frederick Lomberg being duly sworn, says: That he is secretary of R. A. Pilcher Co., Inc., the Defendant above named; that he has read the foregoing answer and knows the contents thereof, and that the same is true to his own knowledge, except as to matters therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true.

FREDERICK LOMBERG,

Sworn to before me this 2d day of June, 1926.

[Seal] VINIE A. BOWDERY,
Notary Public, Kings County.

Kings Co. Clerk's No. 970. Registers No. 7535.
Certificate filed in New York County. County Clerk's No. 989A. Registers No. 7061.
Commission expires March 30, 1927. [22]

United States District Court Southern District of New York.

(IN EQUITY—37—146.)

SIDNEY GILSON, HERMAN AVRUTINE and SAMUEL AVRUTINE, Copartners Engaged in Business as NATIONAL GARMENT CO.,

Complainants,

against

R. A. PILCHER CO., INC.,

Defendant.

ORDER APPOINTING RECEIVER.

And now on this 3d day of June, 1926, this cause came on to be heard upon the bill of complaint duly filed herein, and the answer of the defendant hereto this day likewise filed, and upon a motion of the plaintiff for the appointment of a Receiver, and after hearing Irving L. Ernst, of counsel, representing the complainant, and after due deliberation, it is adjudged that the complainant upon the facts contained in the said bill and upon said answer is entitled to the relief hereby granted, and it is

On motion of McManus, Ernst & Ernst, attorneys for the complainant

ORDERED, ADJUDGED AND DECREED as follows:

That Arthur F. Gotthold of the city of New York and A. F. Lieurance of Oakland, California, be and they hereby are appointed temporary Receivers of the above-named defendant and all of the property, assets and effects of said defendant, or in which the said defendant has any ownership or interest, whether such property be real, personal and mixed, and of whatsoever kind and description and wheresoever situate, and of all office furniture, fixtures, books of account, records and other books, papers and accounts, [23] cash on hand or in bank or on deposit, things in action, credits, stocks, bonds, securities, shares of stock notes or bills receivable, muniments of title, as well as all other property of

every character and description whatsoever of the defendant, and it is further

ORDERED, ADJUDGED AND DECREED that the said Receivers be and they are hereby authorized forthwith to take possession and control and custody of all said property, assets and effects of said defendants; that said Receivers are authorized to do all and any things and enter into all or any agreements as may be deemed by them necessary or advisable to preserve and protect the said property or assets; in their discretion to employ and discharge and to fix the compensation of such officers, agents and employees as may, in their judgment, be necessary or advisable in the administration of this estate; to employ accountants and counsel, and to make such payments and disbursements as may be needful or proper in the preservation of the assets of the defendant.

Said Receivers are further authorized and empowered to institute, prosecute, defend, compromise, adjust, intervene in or become party to such suits, actions or proceedings at law or in equity, including ancillary proceedings in state or federal courts, as may in their judgment be necessary or proper for the protection and preservation of the assets of the defendant or the carrying out of the terms of this decree, and likewise to defend, compromise or adjust, or otherwise dispose of all or any suits, actions or proceedings now pending in any court by or against the said defendant where such prosecution, compromise, defense [24] or other disposition of such suit or action will in the judgment of said Re-

ceivers be advisable or proper for the protection of the assets of the above-named defendants, and such Receivers are authorized to settle with, compromise, collect from or make allowance to debtors of the above-named defendant; to enter into such arrangements, compositions, extension or otherwise with debtors of the defendant as the said Receivers may deem advisable; and generally said Receivers are authorized to do all acts, enter into any agreements and accept, adopt or abandon any or all contracts as may be deemed by such Receivers advisable for the protection or preservation of the assets of the above-named defendant. And it is further

ORDERED that the bonds of the said Receivers in the sum of Ten Thousand Dollars each conditioned that he will well and truly perform the duties of his office and duly account for all moneys and property which come into his hands and abide by and perform all things which he shall be directed to do, with sufficient sureties to be approved by a Judge of this court, be filed with the Clerk of this court within two (2) days from the date of this order. And it is further

ORDERED, ADJUDGED AND DECREED that said defendant its officers and directors, agents and employees and all other persons claiming to act, by, through or under or for said defendant, and all other persons, firms and corporations, including creditors of the defendant, and including all sheriffs, marshals, constables and their agents and deputies, and all other officers, are hereby enjoined from transferring, removing, disposing of or attempting

in any way, to remove, transfer or dispose of or in any way interfere [25] with any of the properties owned by or in the possession of said defendant, and all said persons, firms and corporations are enjoined from doing any act whatsoever to interfere with the possession and management by said Receivers of the properties of the defendant, or in any way to interfere with the said Receivers in the discharge of their duties, or to interfere in any way with the administration and disposition in this suit of the affairs and properties of the defendant, and all creditors of the said defendant are hereby enjoined from instituting or prosecuting or continuing the prosecution of any pending actions, suits or proceedings at law or in equity, or under any statute against the said defendant, and from levying any attachments, executions or other processes, upon or against any of the properties of the said defendant, or from taking or attempting to take into their possession any of the properties of the said defendant, and from issuing or causing the execution or issuance out of any court of any writ, process, summons, subpoena, replevin or attachment, and it is further

DECREED that the Receivers be and they hereby are directed within thirty (30) days from the date of this decree, to cause to be mailed to each and every creditor of the defendant known to such Receivers, a copy of this order and a notice of a motion to make the receivership herein permanent, such mailing to be in a securely sealed envelope, postage prepaid, and to be addressed to said credi-

tor at the last postoffice address known to the said Receivers and such service by mail is hereby decreed to be due, timely sufficient and complete service of notice of this decree and this suit and of such notice and all proceedings had or to be had herein and upon all such creditors for all purposes. And it is further [26]

DECREED that all such creditors of the defendant be, and they hereby are directed to file with the Receivers or any permanent Receivers at such office or place of business as said Receivers may designate at within ninety (90) days from the date of this order, a duly sworn statement of all or any such claims as they such creditors, may have or assert against the defendant, and such statement shall be verified before any officer authorized to administer oaths by the laws of the State where said claim is verified and such statements of claims shall, where the same is evidenced by any written instrument, have such written instrument attached thereto. And it is further

DECREED that notice of the time and place for the filing of the said claim shall be published at least four times before the expiration of said period of ninety (90) days in the New York Times. And it is further

DECREED that all such creditors as shall fail to file their claims with said Receivers as herein provided, and within the time fixed, shall be debarred from any share of, in or to, the properties of the said defendant, and shall not be entitled to

receive any share thereof, or of the proceeds thereof. And it is further

DECREED that the Receivers shall have leave to apply for such other or further orders as may to them from time to time seem advisable or necessary in the administration of this estate.

AUGUSTUS N. HAND,
U. S. D. J. [27]

ALL of which we have caused by these presents to be exemplified, and the seal of the said District Court to be hereunto affixed.

WITNESS, the Honorable AUGUSTUS N. HAND Judge of the District Court of the United States for the Southern District of New York, at the city of New York, in the Southern District of New York, this 14th day of June, in the year of our Lord one thousand nine hundred and twenty-six and of our Independence the one hundred and fiftieth.

[Seal] ALEXANDER GILCHRIST, Jr.,
Clerk.

United States of America,
Southern District of New York,—ss.

I, Augustus N. Hand, one of the Judges of the District Court of the United States for the Southern District of New York, do hereby certify, that Alexander Gilchrist, Jr., whose name is subscribed to the preceding exemplification, is the Clerk of the said District Court, duly appointed and sworn, and that full faith and credit are due to his official acts. I further certify that the seal affixed to the said

exemplification is the Seal of the said District Court, and that the attestation thereof is in due form of law.

Dated New York, June 14th, 1926.

AUGUSTUS N. HAND,
United States District Judge.

United States of America,
Southern District of New York,—ss.

I, Alexander Gilchrist, Jr., Clerk of the District Court of the United States for the Southern District of New York, do hereby certify, that Hon. Augustus N. Hand, whose [28] name is subscribed to the preceding certificate, is one of the Judges of the District Court of the United States for the Southern District of New York, duly appointed and sworn, and that the signature of said Judge to said Certificate is genuine.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the said court, at the city of New York, in the Southern District of New York, this 14th day of June, 1926.

[Seal] ALEXANDER GILCHRIST, Jr.,
Clerk.

[Endorsed]: Filed June 30, 1928. [29]

[Title of Court and Cause.]

ORDER IN ANCILLARY PROCEEDINGS APPOINTING RECEIVERS, ETC.

The verified petition of A. F. Lieurance, filed on behalf of himself and Arthur F. Gotthold in the above-entitled matter, petitioning for the appointment of the said A. F. Lieurance and Arthur F. Gotthold as Receivers of the R. A. Pilcher Co., Inc., in the above-entitled proceeding in ancillary proceedings coming on this 9th day of June, 1926, to be heard, and upon motion of Edward R. Eliassen, Esq., representing the said Petitioner, and after due deliberation and good cause appearing therefor; and it appearing to the above-entitled court that the relief asked for should be granted; and it further appearing that the United States District Court in and for the Southern District of New York in the above-entitled proceeding (In Equity—No. 37—146), the Honorable Augustus N. Hand, United States District Court Judge, made its Order on the 3d day of June, 1926, appointing the said A. F. Lieurance and Arthur F. Gotthold as Receivers in the above-entitled proceeding and authorizing and empowering them, among other things, to institute ancillary proceedings:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED herein as follows: [30]

That Arthur F. Gotthold of the city of New York, and A. F. Lieurance of Oakland, California, be and

they hereby are appointed temporary Receivers of the above-named defendant and all of the property, assets and effects of said defendant, or in which said defendant has any ownership or interest, whether such property be real, personal and mixed, and of whatsoever kind and description and wheresoever situate, and of all office furniture, fixtures, books of account, records and other books, papers and accounts, cash on hand or in bank or on deposit, things in action, credits, stocks, bonds, securities, shares of stock, notes or bills receivable, muniments of title, as well as all other property of every character and description whatsoever of the defendant, and it is further

ORDERED, ADJUDGED AND DECREED that the said Receivers be and they are hereby authorized forthwith to take possession and control and custody of all said property assets and effects of said defendants; that said Receivers are authorized to do all and any things and enter into all or any agreements as may be deemed by them necessary or advisable to preserve and protect the said property or assets; in their discretion to employ and discharge and to fix the compensation of such officers, agents and employees as may, in their judgment, be necessary or advisable in the administration of this estate; to employ accountants and counsel, and to make such payments and disbursements as may be needful or proper in the preservation of the assets of the defendant.

Said Receivers are further authorized and empowered to institute, prosecute, defend, compromise,

adjust, intervene in or become party to such suits, actions or proceedings at law or in equity, including ancillary [31] proceedings in state or federal courts, as may in their judgment be necessary or proper for the protection and preservation of the assets of the defendant or the carrying out of the terms of this decree, and likewise to defend, compromise or adjust, or otherwise dispose of all or any suits, actions, or proceedings now pending in any court by or against the said defendant where such prosecution, compromise, defense or other disposition of such suit or action will in the judgment of said Receivers be advisable or proper for the protection of the assets of the above-named defendants, and such Receivers are authorized to settle with, compromise, collect from or make allowance to debtors of the above named defendant; to enter into such arrangements, compositions, extension or otherwise with debtors of the defendant as the said Receivers may deem advisable; and generally said Receivers are authorized to do all acts, enter into any agreements and accept, adopt or abandon any or all contracts as may be deemed by such Receivers advisable for the protection or preservation of the assets of the above-named defendant. And it is further

ORDERED that the bonds of the said Receivers in the sum of Ten Thousand Dollars ($10,000.) each conditioned that he will well and truly perform the duties of his office and duly account for all moneys and property which come into his hands and abide by and perform all things which he shall be di-

rected to do, with sufficient sureties to be approved by a Judge of this court, be filed with the Clerk of this court within ten (10) days from the date of this order. And it is further

ORDERED, ADJUDGED AND DECREED that said defendant, [32] its officers and directors, agents and employees, and all other persons claiming to act by, through or under or for said defendant, and all other persons, firms and corporations, including creditors of the defendant and including all sheriffs, marshals, constables and their agents and deputies, and all other officers, are hereby enjoined from transferring, removing, disposing of or attempting in any way to remove, transfer or dispose of or in any way interfere with any of the properties owned by or in the possession of said defendant, and all said persons, firms and corporations are enjoined from doing any act whatsoever to interfere with the possession and management by said Receivers of the properties of the defendant, or in any way to interfere with the said Receivers in the discharge of their duties, or to interfere in any way with the administration and disposition in this suit of the affairs and properties of the defendant, and all creditors of the said defendant are hereby enjoined from instituting or prosecuting or continuing the prosecution of any pending actions, suits or proceedings at law or in equity, or under any statute, against the said defendant, and from levying any attachments, executions or other processes, upon or against any of the properties of the said defendant, or from taking or attempting to

take into their possession any of the properties of the said defendant, and from issuing or causing the execution or issuance out of any court of any writ, process, summons, subpoena, replevin or attachment, and it is further

DECREED that the Receivers be and they hereby are directed within thirty (30) days from the date of this [33] decree, to cause to be mailed to each and every creditor of the defendant known to such Receivers, a copy of this order and a notice of a motion to make the receivership herein permanent, such mailing to be in a securely sealed envelope, postage prepaid, and to be addressed to said creditor at the last postoffice address known to the said Receivers and such service by mail is hereby decreed to be due, timely, sufficient and complete service of notice of this decree and this suit and of such notice and all proceedings had or to be had herein and upon all such creditors for all purposes. And it is further

DECREED that all such creditors of the defendant be, and they hereby are directed to file with the Receivers or any permanent Receivers at such office or place of business as said Receivers may designate at within ninety (90) days from the date of this order, a duly sworn statement of all or any such claims as they, such creditors, may have or assert against the defendant, and such statement shall be verified before any officer authorized to administer oaths by the laws of the State where said claim is verified and such statements of claims

shall, where the same is evidenced by any written instrument, have such written instrument attached thereto. And it is further

DECREED that notice of the time and place for the filing of the said claim shall be published at least four times before the expiration of said period of ninety (90) days in the Oakland Tribune. And it is further

DECREED that all such creditors as shall fail to file their claims with said Receivers as herein provided, and within the time fixed, shall be debarred from any share of, in or to the properties of the said defendant, and shall not be entitled to receive any share thereof, or of [34] the proceeds thereof. And it is further

DECREED that the Receivers shall have leave to apply for such other or further orders as may to them from time to time seem advisable or necessary in the administration of this estate.

Dated: June 9, 1926.

A. F. ST. SURE,
Judge of the United States District Court.

[Endorsed]: Filed June 9, 1926. [35]

[Title of Court and Cause.]

ORDER CONTINUING RECEIVERS AND MAKING THEM PERMANENT.

And now, on the 9th day of August, 1926, this cause having come on to be heard on the return of

an application to continue the appointment of Arthur F. Gotthold and A. F. Lieurance as Receivers of the property of the defendant appointed by the above-entitled court by order dated the 9th day of June, 1926, and to make them permanent Receivers, and for such other order or decree as to the Court may seem proper and just; and

After reading and filing the report of the Receivers dated July 22d, 1926; and

After hearing Edward R. Eliassen, Esq., attorney for the Receivers in support of the application; and

No person appearing in opposition thereto; and

On reading and filing the notice of hearing with proof of due service; and

Due deliberation having been had;

Now, on motion of Edward R. Eliassen, Esq., attorney for the temporary Receivers, it is hereby ORDERED, ADJUDGED and DECREED as follows:

One. That Arthur F. Gotthold of the city of New York, and A. F. Lieurance of Oakland, California, be and they are hereby continued as and made permanent Receivers of the property of the defendant with all powers and duties mentioned and set forth in the order of their appointment as [36] temporary Receivers dated June 9th, 1926, and also with all the powers and duties mentioned in an order of the above-entitled court made on the 30th day of June, 1926; and it is further

Two. ORDERED, ADJUDGED AND DECREED that the bonds heretofore filed by the Re-

ceivers herein be and they are hereby deemed to be filed by them as permanent, as well as temporary Receivers and that a copy of this order be duly served upon the surety on the bonds of the said Receivers; and it is further

Three. ORDERED, ADJUDGED AND DECREED that the Receivers are hereby authorized to continue the business of the defendant in the usual and ordinary course until the further order of this Court in the premises, except that the Receivers be and they are hereby authorized, in their discretion, to sell, without further order, for cash, such stores, either separately or in bulk, as may prove unprofitable or as they may deem unprofitable to continue further. Notice, however, of the proposed sale of such store or stores and the terms thereof shall be given to all creditors by mail at least ten (10) days before the proposed transfer so that the creditors or others interested may, if they see fit, make other or better bids therefor, in which event, the Receivers are authorized to sell the said store or stores to the highest bidder therefor and to deliver good and sufficient bill or bills of sale and documents of title without the further order of this Court; and it if further

Four. ORDERED, ADJUDGED AND DECREED that the appointments of Phillip A. Hershey & Company as accountants, and of Edward R. Eliassen, Esq., as attorney for the Receivers, be [37] and they are hereby confirmed and approved; and it is further

Five. ORDERED, ADJUDGED AND DECREED that A. F. Lieurance may continue to sign all checks for both Receivers on the bank account of the Receivers, and that his sole signature shall be sufficient for that purpose; and it is further

Six. ORDERED, ADJUDGED AND DECREED that said Receivers, in purchasing merchandise, may purchase all such merchandise in the open market and for such prices as to the Receivers may seem just and reasonable; and it is further

Seven. ORDERED, ADJUDGED AND DECREED that the Receivers be and they are hereby granted permission to apply at the foot of this decree for such other and further and additional relief as to the Court may seem just and proper in the premises.

Dated at San Francisco, August 9th, 1926.

A. F. ST. SURE,
United States District *Court* Judge.

[Endorsed]: Filed August 9, 1928. [38]

(Title of Court and Cause.)

STIPULATION AND AGREEMENT BETWEEN RECEIVER AND CERTAIN CREDITORS THAT THOSE CREDITORS' PROOFS OF DEBT FILED IN THE NEW YORK PROCEEDING ARE SUFFICIENT PROOFS IN CALIFORNIA PROCEEDING.

In the above-entitled proceeding it is hereby

stipulated and agreed by and between A. F. Lieurance, one of the Receivers herein, and the creditors of said R. A. Pilcher Co., whose names appear in a list of creditors hereto attached marked Exhibit "A" and made a part hereof, that the proofs of debt or verified claims of the aforesaid creditors heretofore proved and filed in the original proceeding in New York City entitled: United States District Court, Southern District of New York. Sidney Gilson, Herman Avrutine and Samuel Avrutine, Copartners Engaged in Business as National Garment Co., Complainants vs. R. A. Pilcher Co., Inc., Defendant. In Equity—No. 37—146, may be accepted as sufficient proofs of said debts or claims in the above-entitled proceeding or ancillary proceeding now pending in the United States District Courts, in and for the States of California, Oregon, and Washington, and particularly sufficient proofs of said claims or debts under the notice to creditors given by said Receivers to present or file claims as ordered by the United States District Court, for the District of California, copy of which notice is hereto annexed marked Exhibit "B" and made a part hereof;

It is further stipulated and agreed that no further or direct presentation or filing of the aforesaid creditors' claims shall be necessary in the aforesaid United States [39] District Courts of California, Oregon and Washington, but that the filing of this stipulation or agreement with respect to the aforesaid claims shall be conceded as meeting all

of the requirements of said notice to creditors, copy of which as aforesaid is attached hereto, marked Exhibit "B" and made a part hereof.

A. F. LIEURANCE,
Receiver.

EDWARD R. ELIASSEN,
Attorney for Said Receiver.

JOSEPH KIRK,
Attorney for Aforesaid Creditors. [40]

EXHIBIT "A."

LIST OF CREDITORS WHOSE CLAIMS OR PROOFS OF DEBT HAVE BEEN FILED BY BOARD OF TRADE OF SAN FRANCISCO IN THE RECEIVERSHIP PROCEEDING PENDING IN NEW YORK CITY—IN RE R. A. PILCHER & CO.,

Walton N. Moore Dry Goods Co.	$29316.07
J. H. Newbauer & Co.	7150.88
G. W. Reynolds Co.	3772.82
L. Dinkelspiel Co.	2460.71
Belding Bros. & Co.	1735.13
E. J. Feisel Co.	1569.64
Blair Raas Co.	1768.71
Standard Hat Co.	1573.93
M. R. Fleischman & Co.	453.91
J. B. Crowley	407.12
Muller & Raas Co.	378.65
Kuh Bros. Inc.	372.34
W. A. Genesy & Co.	306.88
Edmund Loewy Co.	295.25

Morris & Co.	254.28
C. Benedict Mfg. Co. (Ever Ready Rubber ProCo)	242 16
Moline Miller Co.	475.44
Barnard Hirsch Co.	104.18
Williams Marvin Co.	97.02
Zellerbach Paper Co.	26.28
M. J. Brandenstein & Co.	37.75
Andrew A. Jacob & Co.	36.00
Hart Silk Co.	29.09
Frederick Weingarten Co.	25.55
L. Samter & Sons	18.28
Simon E. Davis & Co.	13.45
The Sidley Co.	8.25
Hills Bros.	340.06
Napatan Shoe Co.	217.20
United States Rubber Co.	521.80
G. C. Hall & Son	60.89
A. Crocker & Co.	158.35
Eloesser Heynemann Co.	206.36
Goldstone Bros.	198.31
Hedges Buck Co.	190.00
Cluett, Peabody & Co.	288.86
Proctor & Gamble Distributing Co.	178.60
Everwear Mfg. Co.	160.06
Nippon Dry Goods Co.	176.37
Pacific Manifolding Book Co.	142.34
Levi Strauss & Co.	127.75
D. F. DeBernardi & Co.	123.05
American Biscuit Co.	118.30
Eastman Gibbens Co.	363.47
S. H. Frank & Co.	4.32

Western Meat Co.	259.76
Mangrum & Otter, Inc.	31.35
Clayburgh Bros.	2164.67
Sperry Flour Co.	215.91
Sigmmund Eisner Co.	204.23
Bell Hat & Frame Co.	790.66
Everite Hat Mfg Co.	3092.50
Ideal Hat & Novelty Co.	2108.68
Provident Hat Co.	360.50
Sunshine Mfg. Co.	75.00

[41]

EXHIBIT "B."

(Title of Court and Cause.)

PLEASE TAKE NOTICE, that pursuant to an order made in the above-entitled suit, dated June 9th, 1926, all creditors are directed to file with the Receivers within ninety (90) days from the date thereof, at the place designated by them, to wit, the office of Edward R. Eliassen, 1203 Central Bank Building, City of Oakland, County of Alameda, State of California, a duly sworn statement of all and any such claims as the creditors may have or assert against the above-named defendant, and such statement shall be verified before any officer authorized to administer oaths by the laws of the State where said claim is verified, and such statement of claim shall, where the same is evidenced by a written instrument have such written instrument attached thereto.

PLEASE TAKE FURTHER NOTICE, that by said order, dated June 9th, 1926, all creditors who

shall fail to file their claim within ninety (90) days from and after June 9, 1926, shall be debarred from any share of, in or to the properties of the defendant and shall not be entitled to receiver any share thereof, or the proceeds thereof.

Dated: Oakland, California, August 7th, 1926.

ARTHUR F. GOTTHOLD,
A. F. LIEURANCE,
Receivers of R. A. Pilcher Co. Inc.
EDWARD R. ELIASSEN,
Attorney for Receivers, 1203 Central Bank Building, Oakland, California.

[Endorsed]: Filed Dec. 10, 1926. [42]

(Title of Court and Cause.)

ORDER THAT PROOFS OF DEBT (ENUMERATED) FILED IN NEW YORK PROCEEDING ARE SUFFICIENT PROOFS IN CALIFORNIA PROCEEDING.

Upon reading and filing the stipulation and agreement by and between A. F. Lieurance, one of the Receivers herein, and certain creditors of said R. A. Pilcher Co. whose names appear in a list attached hereto, marked Exhibit "A" and made a part hereof,

IT IS HEREBY ORDERED, that the proofs of debt or verified claims of the aforesaid creditors, heretofore proved and filed in the original proceeding in New York City entitled: United States District Court Southern District of New York,

Sidney Gilson, Herman Avrutine and Samuel Avrutine, Copartners Engaged in Business as National Garment Co., Complainants, vs. R. A. Pilcher Co., Inc., Defendant. In Equity—No. 37–146, are sufficient proofs of said debts or claims in the above-entitled proceeding or ancillary proceeding now pending in the United States District Courts, in and for the States of California, Oregon and Washington, and particularly are sufficient proofs of said claims or debts under the notice to creditors given by said Receivers to present or file claims as ordered by the United States District Court, for the District of California, copy of which notice is hereto annexed marked Exhibit "B" and made a part hereof;

AND IT IS FURTHER HEREBY ORDERED, that no other or direct presentation or filing of the aforesaid creditors' claims shall be necessary in the aforesaid United States [43] District Courts of California, Oregon and Washington, and that the filing of the stipulation and agreement herein referred to with respect to the aforesaid claims, complies with all the requirements of said notice to creditors, copy of which as aforesaid is attached hereto, marked Exhibit "B" and made a part hereof.

ST. SURE,
Judge. [44]

EXHIBIT "A."

LIST OF CREDITORS WHOSE CLAIMS OR PROOFS OF DEBT HAVE BEEN FILED BY BOARD OF TRADE OF SAN FRANCISCO IN THE RECEIVERSHIP PROCEEDING PENDING IN NEW YORK CITY—IN RE R. A. PILCHER & CO.

Walton N. Moore Dry Goods Co.	$29316.07
J. H. Newbauer & Co.	7150.88
G. W. Reynolds Co.	3772.82
L. Dinkelspiel Co.	2460.71
Belding Bros. & Co.	1735.13
E. J. Feisel Co.	1569.64
Blair Raas Co.	1768.71
Standard Hat Co.	1573.93
M. R. Fleischman & Co.	453.91
J. B. Crowley	407.12
Muller & Raas Co.	378.65
Kuh Bros. Inc.	372.34
W. A. Genesy & Co.	306.88
Edmund Loewy Co.	295.25
Morris & Co.	254.28
C. Benedict Mfg. Co. (Ever Ready Rubber Prod. Co.)	242.16
Moline Miller Co.	475.44
Barnard Hirsch Co.	104.18
Williams Marvin Co.	97.02
Zellerbach Paper Co.	26.28
M. J. Brandenstein & Co.	37.75
Andrew A. Jacobs & Co.	36.00

Hart Silk Co.	29.09
Frederick Weingarten Co.	25.55
L. Samter & Sons	18.28
Simon E. Davis & Co	13.45
The Sidley Co.	8.25
Hills Bros.	340.06
Napatan Shoe Co.	217.20
United States Rubber Co.	521.80
G. C. Hall & Son	60.89
A. Crocker & Co.	158.35
Eloesser Heynemann Co.	206.36
Goldstone Bros.	198.31
Hedges Buck Co.	190.00
Cluett, Peabody & Co.	288.86
Procter & Gamble Distributing Co.	178.60
Everwear Mfg. Co.	160.06
Nippon Dry Goods Co.	176.37
Pacific Manifolding Book Co.	142.34
Levi Strauss & Co.	127.75
D. F. DeBernardi & Co.	123.05
American Biscuit Co.	118.30
Eastman Gibbens Co.	363.47
S. H. Frank & Co.	4.32
Western Meat Co.	259.76
Mangrum & Otter, Inc.	31.35
Clayburgh Bros.	2164.67
Sperry Flour Co.	215.91
Signmund Eisner Co.	204.23
Bell Hat & Frame Co.	790.66
Everite Hat Mfg. Co.	3092.50
Ideal Hat & Novelty Co.	2108.68

Provident Hat Co.	360.50
Sunshine Mfg. Co.	75.00

[45]

EXHIBIT "B."

(Title of Court and Cause.)

PLEASE TAKE NOTICE, that pursuant to an order made in the above-entitled suit, dated June 9th, 1926, all creditors are directed to file with the Receivers within ninety (90) days from the date thereof, at the place designated by them, to wit, the office of Edward R. Eliassen, 1203 Central Bank Building, City of Oakland, County of Alameda, State of California, a duly sworn statement of all and any such claims as the creditors may have or assert against the above-named defendant and such statement shall be verified before any officer authorized to administer oaths by the Laws of the State where said claim is verified, and such statement of claim shall, where the same is evidenced by a written instrument, have such written instrument attached thereto.

PLEASE TAKE FURTHER NOTICE, that by said order dated June 9th, 1926, all creditors who shall fail to file their claims, within ninety (90) days from and after June 9, 1926, shall be debarred from any share of, in or to the properties of the defendant and shall not be entitled to receive any share thereof, or the proceedings thereof.

Dated: Oakland, California, August 7th, 1926.

ARTHUR F. GOTTHOLD,
A. F. LIEURANCE,
Receivers of R. A. Pilcher Co., Inc.
EDWARD R. ELIASSEN,
Attorney for Receivers, 1203 Central Bank Building, Oakland, California.

Filed December 10, 1926. [46]

(Title of Court and Cause.)

ORDER AUTHORIZING CERTAIN PAYMENTS TO CREDITORS, ETC.

This cause having duly come on to be heard this ninth day of December, 1926, on the report and petition of the Receivers herein; and after hearing Edward R. Eliassen, Esq., the attorney for the Receivers; and good cause appearing therefor; now on motion of Edward R. Eliassen, Esq., the said attorney for the Receivers;

IT IS HEREBY ORDERED AND DECREED as follows:

I.

That all debts and claims entitled to priority for which proofs of claim have been filed, where such proofs of claim are necessary, be paid in full. If the Receivers doubt the validity of any priority claims filed, the validity of such claims will be determined in the manner hereinafter set forth.

II.

That a first dividend of 40% be declared and

paid to all creditors whose claims have been filed and allowed by the Receivers herein and the Receivers are hereby authorized to accept proofs of claim in due form from creditors whose claims appear on the books of the defendant to be valid, notwithstanding that the time limit for such filing has expired. In this connection, the Receivers are authorized and empowered to notify such creditors whose claims have not yet been filed that unless they are received by the Receivers before such date or time as the Receivers may fix for the purpose; no consideration will be given to their claims and the said claims will be barred. [47]

III.

Frank O. Nebeker is hereby appointed Special Master to hear the objections filed by the Receivers to any and all claims filed or that may hereafter be filed, and to take the testimony offered by the parties and to report the same to this Court with his opinion thereon.

IV.

That Edward R. Eliassen, Esq., attorney for the Receivers, be paid immediately the sum of Ten Thousand Dollars, to apply on account of services rendered.

V.

That the sum of Ten Thousand Dollars be paid to apply on account of Receivers' services; to be divided 75% thereof to Receiver A. F. Lieurance and 25% thereof to Arthur F. Gotthold, his co-receiver.

Dated: December 10th, 1926.

A. F. ST. SURE,
Judge United States District Court.

[Endorsed]: Filed December 10, 1926. [48]

(Title of Court and Cause.)

ORDER AMENDING ORDER DATED DECEMBER 10, 1926.

A stipulation having been entered into and filed herein between A. F. Lieurance, Receiver, and Edward R. Eliassen, Esq., attorney for the Receivers in the above-entitled proceeding, and the Creditors' Committee representing eastern creditors of the R. A. Pilcher Co., Inc., and the Creditors' Committee representing the western creditors of the R. A. Pilcher Co., Inc., and Francis J. Heney, Esq., and Joseph Kirk, Esq., their attorneys, agreeing to a modification of that certain order made by the above-entitled court on December 10, 1926, so as to provide that the allowance to be paid to A. F. Lieurance, Receiver, on account, be reduced to $3,500.00, and the allowance on account to Edward R. Eliassen, attorney for the Receivers, be reduced to $5,500.00; and the said stipulation having been read and considered by the Court:

IT IS HEREBY ORDERED, that the aforementioned order of the above-entitled court dated December 10, 1926, be and it is hereby modified and amended as follows:

Paragraph numbered IV is hereby amended to read as follows:

"That Edward R. Eliassen, attorney for the Receivers, be paid immediately the sum of $5500.00 to apply on account of services."

Paragraph numbered V is hereby amended to read as follows:

"That the sum of $3500.00 be paid to Receiver A. F. Lieurance on account of his services."

Dated: May 20th, 1927.

ST. SURE,
Judge of the United States District Court.

[Endorsed]: Filed May 20, 1927. [49]

[Title of Court and Cause.]

RECEIVERS' REPORT ACCOMPANYING FINAL ACCOUNT.

To the Honorable A. F. St. Sure, Judge of the United States District Court, in and for the Northern District of California, Southern Division:

A. F. Lieurance and Arthur F. Gotthold, respectfully represent and report as follows, to wit:

That the said A. F. Lieurance and Arthur F. Gotthold were, by an order of the above-entitled court made on the 9th day of June, 1926, duly and regularly appointed as temporary Receivers of the above-named defendant company, and that on or about the 9th day of August, 1926, by an order

duly made and entered in the above-entitled proceeding, the said Receivers were made permanent Receivers of the said defendant Company and qualified as such, and that they ever since have been and now are the duly appointed, qualified and acting Receivers in equity of the above-named R. A. Pilcher Co., Inc., defendant.

That under and pursuant to the above-mentioned orders, Receiver Lieurance, on behalf of said Receivers, took charge and possession of the assets of the said defendant corporation situate within the Northern District of California, the District of Oregon and the Eastern and Western Districts of Washington. As heretofore reported, the assets within the Northern District of California consisted [50] of three merchandise stores and their contents, situate at Stockton, California; Oroville, California; and Turlock, California.

Receiver Gotthold, on behalf of the Receivers, took possession of the general office and its equipment located at New York City, New York.

That prior to said appointment of said Receivers, they, the said A. F. Lieurance and Arthur F. Gotthold, were by an order made by the United States District Court in and for the Southern District of New York, duly appointed as Receiver of the defendant corporation and that after the appointment in this jurisdiction of the said Receivers, they, the said A. F. Lieurance and Arthur F. Gotthold, were duly and regularly appointed Receivers of the defendant Company by the United States District Courts in and for the District of Oregon, the West-

Oroville and Turlock, and to operate the same and to purchase all necessary merchandise therefor from time to time and as needed, and authorizing them to do any and all other things in the maintenance and operation of the aforementioned business which, in the opinion of the said Receivers or either of them, may be deemed necessary or advisable. Similar orders [52] were made by the courts in Oregon and Washington jurisdictions in the above-entitled matter. And pursuant to such orders, the said Receivers, by Receiver A. F. Lieurance, made purchases for the purpose of balancing up the stocks, keeping the stores going, keeping up the sales, and otherwise maintaining the business and preserving the assets, and that purchases of merchandise were made during the administration as follows:

Stockton store	$ 5069.35
Oroville store	3069.05
Turlock store	6904.51
Total	$15042.91

These stores, under the direction of Receiver Lieurance, were kept open and the business conducted in an orderly manner. Merchandise sales were made as follows, to wit:

Stockton store	$34917.17
Oroville store	12233.77
Turlock store	29003.79
Total	$76154.73

That the only stores belonging to the defendant Company were the sixteen stores located in California, Oregon and Washington, although the principal office of the corporation was located at New York City. This New York office of the corporation was closed shortly after the institution of the Receivership.

After paying all the store expenses and all bills for merchandise, then due and received to date, and as a result of store operations and of sales of merchandise in the Western jurisdictions, the Receivers had on hand on the 31st day of August, 1926, the sum of $228,178.07.

At that time, Receiver Lieurance communicated with Coreceiver Gotthold and Messrs. McManus, Ernst & Ernst, attorneys for the Receivers in New York, informing them of the condition of the estate, and suggesting that if the business was to be carried on for an appreciable length of time, pending the refinancing of the business by the stockholders, that the greater part of the cash then on [53] hand would have to be expended for merchandise to supply the stores for the coming fall season. Receiver Gotthold and Attorney McManus, Ernst & Ernst in turn conferred with a number of large eastern creditors, and Receiver Lieurance conferred with a number of the larger western creditors, and it was found that the concensus of opinion among the creditors was that the business could not be refinanced, and that the cash then on hand should not be expended for merchandise to replenish the stocks in the stores for future operations, and that unless

the stockholders gave definite assurance that the business would be refinanced, or a satisfactory settlement made, the cash then on hand should be preserved for distribution among the creditors, together with the proceeds of the sale of the remainder of the property.

By appointment, Receiver Lieurance met Mr. J. C. Brownstone of New York, the largest stockholder of the defendant corporation, in Yellowstone Park, Wyoming, previous to August 5th, 1926, for the purpose of discussing the refinancing of the business. This conference did not result in the solution of this problem. Numerous conferences in this regard had with Mr. R. A. Pilcher, president of the corporation, failed to reveal that his efforts to refinance the business would be successful, and when this was definitely known, steps were immediately taken to reduce the assets to cash, through the sale of the stores.

Before offering these stores for sale, it was made known to the principal stockholders of the defendant corporation that in the opinion of the Receivers, the stores of the defendant Company could not be operated at a profit as a whole because of excessive fixed maintenance charges, high rents, etc.

Because of the premises, and pursuant to authority granted in that certain order dated August 9, 1926, the property of the defendant Company situate within the State of California was offered for sale. Due notice thereof was given in accordance with law and the order of the Court, and the said stores within the California [54] jurisdiction, to wit,

the Stockton store, Oroville store and the Turlock store, were duly sold, and the sales approved as shown by the order approving the same now on file in the above-entitled proceeding. These sales brought the sum of $41,000.

As already reported, the stores were sold as going concerns. The stores in the other Western jurisdictions, by authority of the other courts, were also sold in the same manner and by competitive bid. The gross amount received from the sale of the stores in all of the jurisdictions was and is the sum of $257,600. This sum, of course, does not include the sales of merchandise made over the counter during the course of the Receivership, aggregating the sum of $499,263.28.

The sale of the stores as going concerns resulted in yet another benefit. Most of the purchasers desired to retain the stores and their locations, and as a result, no claims have been presented by lessors under the leases. And as the time within which creditors were given an opportunity to present their claims is past, and no claims have been made by any of the lessors in the premises, the Receivership estate has been saved, in the opinion of the Receivers, from a large monetary liability.

By order of Court, the time within which creditors were required to file their claims with the Receivers has expired. And notice was given to all creditors whose claims had not yet been received by the Receivers, that unless their claims were presented and filed before March 1, 1927, any such claims would be barred. A number of creditors,

as shown by the books of the corporation, have failed to present their claims. It is desired, therefore, that this Court make its order in the premises forever barring the claims of such delinquent creditors. The following is a list of such creditors whose names appear on the books of the defendant corporation and who have failed to file their claims, viz:

Name of Creditor.	Amount of Claim.
Addressograph Sales Company	$ 1.17
Bassere Textile Cleaning House	87.75
[55]	
Bornson, Harry B.	29.76
California Cap Mfg. Company	8.75
Eastman, Howard	5.06
Jones Electric Company	5.95
Kass, Ben	29.72
Klamath News	1.50
Logan Studios	3.00
McShine Company	3.40
Messbaum Herzog Company	25.00
Northwestern Hdwe Co	4.02
Perberg & Greenberg	23.25
Rowell Brown & Company	2.56
Shill Bros. & Meadows	.86
Shoe Dealer's Service Co.	4.00
Smith, L. C. Co.	.75
Turner, J. H.	3.05
	$239.55

The Receivers have had presented to them and have considered a total of 647 claims (638 general

claims and 9 preferred claims), aggregating $751,-860.09, as follows, viz:

$ 5,816.34—total amount allowed as preferred;
746,043.75—total amount claimed as general;
718,794.12—total amount allowed as general;
724,610.46—total amount allowed as preferred and general.

The difference in the amounts claimed and the amount allowed being $27,249.63, as adjusted; practically all of this reduction having been effected in the western jurisdictions.

For the purpose of expediting the checking up of claims and considering the validity thereof, and as all the books and vouchers of the defendant Company were at its New York office, in New York City, Phillip A. Hershey, of the firm of Phillip A. Hershey & Co., Accountants, retained by the Receivers in these western jurisdictions, was sent to New York City by permission of this Court.

He caused copies to be made of the necessary books and brought back with him into this jurisdiction all of the claims of the creditors that had been filed and all memoranda necessary for the purpose of properly considering and acting upon the claims of [56] the creditors. In this connection, it might be well to state that since the appointment of the Receivers in the ancillary jurisdictions, Mr. A. F. Lieurance has maintained an office on their behalf at Room 1201 Central Bank Building, Oakland, California. All of the business of the Receivers in the western jurisdictions and all of the

business of the stores during this Receivership has been handled from this office by Mr. Lieurance.

All dividends which are hereafter mentioned have been paid from this office, as shown by the account. And as claims of creditors have been presented within the various jurisdictions, it was deemed advisable to get them all together within this jurisdiction and to handle and pay them from this office. It is to be noted that all creditors, regardless of geographic location, have shared alike in the distribution of dividends. A complete list of the claims presented has been prepared and is filed herewith. The list, it will be observed, not only shows the amount of the claims presented, but also shows the amounts allowed or adjusted. Some of the claims were allowed as preferred claims. Others, as partially preferred; and others as general. Disputed claims have been settled, either by stipulation or by the Court order based upon the findings and report of the Special Master appointed for the purpose of taking testimony and reporting on disputed claims.

The amount of the general claims, therefore, is now the sum of $718,794.12. The preferred claims aggregate $5,816.34, as finally adjusted and allowed. The total of all claims, general and preferred, adjusted and allowed, is $724,610.46.

In this jurisdiction, Hon. Frank O. Nebeker was by an order of the above-entitled court appointed as Special Master. He has reported to this Court upon the claims of the following, viz:

John A. Schindler	$ 1,062.67
M. M. Berg	6,150.00
Eastman-Gibbons Company	338.25
Dave Matthews	500.00
Sherman & Wise	238.70
Weber Showcase & Fixture Co.	32,764.21

[57]

Full hearings were had before Judge Frank O. Nebeker in the matters of the said claims and the Special Master recommended as follows, viz:

(a) That the claim of John A. Schindler be rejected as a preferred claim, and that it be allowed as a general claim in the sum of $1,062.67.

(b) That the claim of Sherman & Wise (C. V. Sherman and R. G. Wise) for $238.70, then pending in suit at Stockton, California, be rejected as a preferred claim and allowed as a general claim.

(c) That the claim of Eastman-Gibbons Company be allowed as a general claim in the sum of $263.25.

(d) That the claim of the Weber Showcase & Fixture Co. be approved as a general claim in the sum of $16,871.61.

(e) That the claim of Dave Matthews be denied.

(f) That the claim of M. M. Berg be settled as follows:

That one of the items of said claim, to wit, item of $4,200 claimed as damages, be denied.

That the item of $200, claimed as damages to an awning be accepted as a general claim.

That item of $500 for painting and staining the interior of the building, be denied.

That item of $375 claimed for cost of removal of vault be denied.

That item of $500, the cost of painting exterior of building be allowed as a general claim.

That item of $225 claimed for damages because of discontinuance and cut-out of burglar alarm, be denied.

That item of $150 claimed as rent or storage, be denied.

We are informed that in the New York jurisdiction, there are certain stockholders' claims, aggregating about $9,000 which are in dispute and upon which hearings have been had before a Special Master appointed there for the purpose. So far as we know, there has not yet been any adjudication upon such claims.

The claims allowed as preferred claims have been paid in full. And pursuant to an order of the above-entitled court made on or about the 10th day of December, 1926, a dividend of forty per cent (40%) has been paid on all general claims allowed. Since [58] said time and on or about the 11th day of May, 1927, an order was made by the above-entitled court authorizing the payment of an additional dividend, amounting to ten per cent (10%).

This dividend also has been paid.

Both of these dividends, as already suggested, were paid from the Oakland office of Receiver A. F. Lieurance.

Because the creditors of the defendant corporation are scattered throughout the West, and also the eastern portion of the United States, and for their information in each of the jurisdictions, it has been deemed advisable by the Receivers and their accountants to file in each jurisdiction a complete account of all their transactions including, of course, an itemized account of all moneys received and disbursed by them within the jurisdiction of the above-entitled court.

On December 10, 1926, the first dividend of forty per cent (40%), as suggested above, was authorized by an order of the above-entitled court. Pursuant to the same order, an interim allowance on account was made to A. F. Lieurance in the sum of $7,500 on account of his services; to Arthur F. Gotthold, as Receiver, in the sum of $2,500, and to Edward R. Eliassen, attorney for the Receivers, in the sum of $10,000 on account of attorney's fees.

As this order was obtained and the allowances made without notice to all the creditors, some of the creditors expressed dissatisfaction and a desire to be heard in the matter of the fixation of the fees of the Receivers and their attorney, and Mr. Lieurance and Mr. Eliassen, thereafter, in the interests of harmony, entered into a stipulation in this jurisdiction, agreeing to a reduction in the amount of such allowances on account; the said allowance on account to Mr. Lieurance to be re-

duced to $3,500, and to Mr. Eliassen the said allowance to be reduced to $5,500, upon the stipulation with the Eastern and Western Creditors' Committees and their attorneys that such allowances were not to be [59] further reduced; that the above-entitled court shall have the exclusive right to fix the compensation of the Receiver, A. F. Lieurance, and Edward R. Eliassen, attorney for the Receivers in the above-entitled proceeding in this jurisdiction; that the final fixation of the fees of Mr. Lieurance and Mr. Eliassen shall be made at the time of the hearing on the final account of the Receivers herein and that notice of the time and place of such hearing shall be given to all of the known creditors of the defendant Company by mailing notices to them at their last known addresses, at least thirty (30) days before such hearing, and that no further or other fixation of their respective fees shall be made by the said Court in the meantime.

Mr. Arthur F. Gotthold has agreed to waive any fees to which he may be entitled in the western jurisdiction. He resides in New York and it has been agreed that he shall be entitled to all the fees allowed the Receivers in the New York jurisdiction. Mr. Lieurance has done all of the work and performed all of the duties of the Receivers in the western jurisdictions. He has been, for a great number of years, engaged in the chain store business. He has had wide experience therein and ever since his appointment as Receiver herein has neglected his own affairs and devoted his time and

effort to the administration of the affairs of this estate. His administration, we respectfully submit, has been an able one. The results show this. And we believe they warrant the payment to him of such fees as will amply compensate him for his time and effort and the results obtained.

We recommend also that Mr. Edward Eliassen, as attorney for the Receivers in the western jurisdictions, be allowed a reasonable fee in this jurisdiction. He has done a large amount of legal work. This work has taken him away from his office a considerable portion of the time. He has had to forego and neglect other professional business. And in the matter of the fixation of his fees we feel that this will be considered. [60]

WHEREFORE: The Receivers pray for an order of the above-entitled court as follows, to wit:

Settling and confirming the final account of the Receivers and confirming this report; fixing the fees and the compensation of A. F. Lieurance, as Receiver, and of Edward R. Eliassen, as attorney for the Receivers; declaring barred all claims of creditors not presented or filed prior to March 1st, 1927; permitting the Receivers after the payments of all attorney's fees and Receivers' fees in the western jurisdiction and the payments of all charges and expenses in connection with the winding up of the affairs of the Receivers in the western jurisdiction, to forward any surplus moneys then in hand to Receiver Arthur F. Gotthold, at New York, for use in the final closing of the estate and proceeding in the New York jurisdiction; and for such other

or further order or relief in the premises as to the Court may seem meet and just and equitable.

ARTHUR F. GOTTHOLD.
A. F. LIEURANCE. [61]

State of California,
County of Alameda,—ss.

A. F. Lieurance, being first duly sworn, deposes and says:

That he is one of the Receivers of the R. A. Pilcher Co., Inc., and that he makes this affidavit on behalf of the Receivers Arthur F. Gotthold and A. F. Lieurance; that he has read and signed the foregoing report and that the same is true of his own knowledge, except as to the matters therein stated on his information or belief, and as to those matters that he believes it to be true.

A. F. LIEURANCE.

Subscribed and sworn to before me this 19 day of May, 1927.

[Seal] EDWARD R. ELIASSEN,
Notary Public in and for the County of Alameda, State of California.

[Endorsed]: Filed May 19, 1927. [62]

[Title of Court and Cause.]

PETITION OF RECEIVERS ARTHUR F. GOTTHOLD AND A. F. LIEURANCE FOR SETTLEMENT AND APPROVAL OF THEIR FINAL ACCOUNT AND REPORT, AND FOR AN ORDER FINALLY FIXING THE FEES AND COMPENSATION OF A. F. LIEURANCE AS RECEIVER AND EDWARD R. ELIASSEN AS ATTORNEY FOR RECEIVERS.

To the Honorable A. F. ST. SURE, Judge of the United States District Court in and for the Northern District of California, Southern Division:

The petition of Arthur F. Gotthold and A. F. Lieurance respectfully represents as follows, to wit:

That they have been and now are the duly appointed, qualified and acting Receivers of the R. A. Pilcher Co., Inc.

That they have filed herewith their final Account and Report of their administration for allowance and approval.

That the said account contains a true and correct statement of all moneys received and disbursed by the Receivers in this jurisdiction, as well as all moneys received and disbursed by them in the jurisdictions of Oregon and Washington.

That the administration of the said Receivers and the estate of the said R. A. Pilcher Co., Inc., is ready to be closed as soon as the compensation

and fees of the Receiver A. F. Lieurance and of Edward R. Eliassen, attorney for the Receivers, has been finally fixed. In this connection, it is suggested that Arthur F. Gotthold, Receiver, makes no request for any allowance [63] to him on account of Receiver's fees in this, or in any western jurisdiction, it having been agreed that Receiver A. F. Lieurance has done and performed all the work and duties of the Receivers within this and the other western jurisdictions and that he shall be entitled to all fees of the Receivers in the western jurisdictions and that said Arthur F. Gotthold shall be entitled to all fees allowed the Receivers in the New York jurisdiction.

That because the allowances heretofore made to the Receivers and to their attorney in the western jurisdictions were made upon *ex parte* application, and because some of the creditors expressed dissatisfaction and a desire to be heard in the matter of the fixation of the fees of the Receivers and their attorney, the Receiver, A. F. Lieurance, and the attorney for the Receivers, Edward R. Eliassen, thereafter in the interests of harmony, entered into a stipulation in this jurisdiction agreeing to a reduction in the amount of such allowances and consented in this jurisdiction to a reduction in the amount of the allowance on acount as follows: Receiver A. F. Lieurance consented to a reduction to $3,500 on account, and Edward R. Eliassen consented to a reduction to $5,500 on account.

That said consent is contained in a stipulation entered into with the representative of the western

and eastern Creditors' Committees, and their attorneys, and it is therein stipulated that the above-entitled court shall have the exclusive right to fix the compensation and fees of the said Receiver and of Edward R. Eliassen, attorney for the Receivers in this jurisdiction, after at least thirty days' notice of the time and place of the hearing on the final account of the Receivers.

That in the opinion of Receiver A. F. Lieurance and attorney Edward R. Eliassen, the value of the services rendered by the said Receiver and by the attorney is greatly in excess of the amount of the allowances upon account, and that an order [64] should be made by the above-entitled court finally fixing the fees and compensation of the said Receiver and the said attorney for services rendered in this jurisdiction, in such sums as will reasonably compensate them for their services, and as to the Court may seem fair and proper in the premises.

WHEREFORE: Petitioners pray for an order of the above-entitled court allowing and approving the final account and report of the receivers and fixing the compensation and fees of Receiver Lieurance; for an order fixing the fees and compensation of Edward R. Eliassen, attorney for the Receivers; barring all creditors who had not, prior to March 1, 1927, presented or filed their claims; and for an order of the above-entitled court authorizing the Receivers, after the payments of all costs and charges and expenses and allowances on account of fees and compensation of the Receiver and the attorney for the Receivers in the western jurisdic-

tions, to forward any surplus moneys to Receiver Arthur F. Gotthold, New York City, to be used in finally closing the administration of the Receivers in the New York jurisdiction; and for such other and further order or orders in the premises as may be meet and proper.

ARTHUR F. GOTTHOLD,
A. F. LIEURANCE,

Receivers of R. A. Pilcher Co., Inc., Petitioners.
EDWARD R. ELIASSEN,
Attorney for Receivers. [65]

State of California,
County of Alameda,—ss.

A. F. Lieurance, being first duly sworn, deposes and says:

That he is one of the Receivers of the R. A. Pilcher Co. Inc., and one of the petitioners named in the foregoing Petition; that he has read the said petition and knows the contents thereof and that the same is true of his own knowledge, except as to the matters therein stated on his information or belief, and as to those matters that he believes it to be true.

A. F. LIEURANCE.

Subscribed and sworn to before me this 19 day of May, 1927.

[Seal] EDWARD R. ELIASSEN,
Notary Public in and for the County of Alameda, State of California.

[Endorsed]: Filed May 19, 1927. [66]

[Title of Court and Cause.]

OBJECTIONS AND EXCEPTIONS TO FINAL ACCOUNT AND REPORT OF THE RECEIVERS, ALSO TO THE PETITION FOR ALLOWANCE OF FURTHER FEES AND COMPENSATION TO RECEIVER LIEURANCE OR TO EDWARD R. ELIASSEN, ATTORNEY FOR THE RECEIVERS.

The undersigned, as creditors of the above-named defendant, R. A. Pilcher Co. Inc., in the respective sums herein stated, to wit:

Walton N. Moore Dry Goods Co. $29,316.07
J. H. Newbauer & Co. 7,150.88
G. W. Reynolds Co. Inc. 3,772.82
L. Dinkelspiel Co. Inc 2,460.71

on their own behalf, and on behalf of fifty-five other California creditors of said defendant whose claims aggregate $65,809.12, and also on behalf and for the benefit of the New York committee of the eastern creditors of said defendant, and which committee represents creditors whose claims aggregate more than three-fourths of the total indebtedness of said defendant, and also on behalf and for the benefit of all of the creditors of the defendant generally, hereby respectfully and earnestly object and except to the account of the Receivers, and also to the report of said Receivers accompanying said final account filed [67] herein, and also to the petition for the allowance of further fees and compensation to Receiver Lieurance and Edward R.

Eliassen, attorney for the Receivers, in the particulars and upon the grounds hereinafter set forth. The final account and report of the receivers, the petition for the allowance and approval thereof and the petition for the allowance of further fees and compensation in favor of Receiver Lieurance and Attorney Eliassen contain virtually the same statements of fact, and the report and petitions each ask for the same orders and action by the Court; therefore, the undersigned, hereinafter styled the "objectors and exceptors," respectfully ask leave to present their objections and exceptions to such final account, final report, and petitions, jointly, and in one document.

I.

OBJECTIONS AND EXCEPTIONS TO THE FINAL ACCOUNT AND FINAL REPORT.

1. General Objections and Exceptions to Both Final Account and Final Report.

(a) The objectors and exceptors are credibly informed and believe, and therefore state the fact to be, that Arthur F. Gotthold, one of the Receivers herein, has never authorized the making or filing of said Receivers' final account and final report, or either thereof, in the form in which they were filed; that he has never concurred therein, and does not now concur therein, as to the matters hereinafter set forth; on the contrary, that he objects and excepts to such final account, final report and petitions for the allowance of further fees and com-

pensation in favor of Receiver Lieurance and Attorney Eliassen, in the particulars and as to the items hereinafter set forth, and that his grounds for such objections and exceptions include the grounds hereinafter set forth. [68]

(b) The objectors and exceptors are further credibly informed and believe, and therefore state the fact to be, that Receiver Gotthold has never authorized nor approved the expenditure or the payment of the item "Dec. 31 (1926) Phillip A. Hershey & Co. Accountants fees $5900.00," which appears at line 14 on page 599, Final Account; but on the contrary he specifically objects and excepts thereto, and repudiates responsibility therefor.

(c) The objectors and exceptors are further credibly informed and believe and therefore state the fact to be, that Receiver Gotthold never has concurred and does not now concur, in the statements set forth in said purported joint report, purporting to explain the manner in which Receiver Lieurance and Attorney Eliassen procured "interim" allowances, the nature of the objections thereto interposed by the creditors and the circumstances concerning the reduction of such allowances; and that Receiver Gotthold never has concurred and does not now concur, in the purported joint recommendation of the allowance of further fees and compensation in favor of Receiver Lieurance and Attorney Eliassen; on the contrary, that he specifically repudiates such purported statements, explanations and recommendations, and objects and excepts thereto, upon

the grounds hereinafter set forth by these objectors and exceptors.

2. Specific Objections and Exceptions to Final Account.

The objectors and exceptors object and except to the item of disbursement appearing at line 14, on page 599, to wit: "Dec. 31 (1926) Phillip A. Hershey & Co. Accountants fees $5900.00," upon the following grounds:

(a) The objectors and exceptors are credibly informed and believe, and therefore state the fact to be, that all of the services performed by Phillip A. Hershey & Co. in the premises, were rendered under a contract between Receiver Lieurance and [69] Phillip A. Hershey & Co. by the terms of which the compensation for such services should be the sum of $300.00 per month, and no more; and the final account shows that (apparently pursuant to such contract) Phillip A. Hershey & Co. were paid the sum of $300.00 each month, including the month of December, 1926, excepting that the monthly payment made to them in August, 1926, was for the sum of $350.00 instead of the sum of $300.00, with no explanation as to the excess payment of $50.00.

(b) The objectors and exceptors are further credibly informed and believe and therefore state the fact to be, that at the time of the employment of Phillip A. Hershey & Co., Receiver Lieurance purported to state to a representative of the creditors of the defendant, the divers items of general expense which would be incurred in the administration

of the ancillary receiverships in the four western jurisdictions; and therein and thereby Receiver Lieurance stated and represented that the sole cost of the services of Phillip A. Hershey & Co. would be the sum of $300.00 per month, as above stated; and immediately thereafter such statement and representation by Receiver Lieurance were reported to the committees of the creditors of the defendant, and, in reliance thereupon, the employment of Phillip A. Hershey & Co. upon such terms was tacitly acquiesced in, and no objections thereto were made or interposed by any of the creditors.

(c) The services rendered by Phillip A. Hershey & Co. were and are of a reasonable value not exceeding said sum of $300.00 per month, and were fully and adequately compensated for and paid prior to the payment of said additional sum of $5,900.00 on December 31, 1926, as to which this objection and exception is interposed.

3. Specific Objections and Exceptions to Final Report.

(a) The objectors and exceptors object and except to the [70] statements set forth in the final report concerning the circumstances under which "interim" or temporary allowances were heretofore made in favor of Receiver Lieurance and Attorney Eliassen; and allege that the true facts in the premises are as hereinafter set forth in the objections and exceptions to the allowance of any further fees or compensation in favor of Receiver Lieurance or Attorney Eliassen, and not otherwise.

(b) The objectors and exceptors object and except to the statement in the final report that Receiver Lieurance, "ever since his appointment as Receiver herein has neglected his own affairs and devoted his time and effort to the administration of this estate"; and the objectors and exceptors deny that such statement is true, in substance or otherwise, but that the true facts in the premises are as hereinafter set forth, and not otherwise.

II.

OBJECTIONS AND EXCEPTIONS TO THE PETITION FOR THE ALLOWANCE OF FURTHER FEES AND COMPENSATION TO RECEIVER LIEURANCE AND ATTORNEY ELIASSEN.

1. As to Both Receiver Lieurance and Attorney Eliassen.

By the final report and the petition for the allowance of further fees and compensation in favor of Receiver Lieurance and Attorney Eliassen, it is represented and stated, in substance, that after the "interim" allowance by the above-named court, on December 10, 1925, of the sum of $7,500.00 to Receiver Lieurance on account of his services together with the sum of $2,500.00 to Receiver Gotthold, and the sum of $10,000.00 to Attorney Eliassen on account of attorney's fees, the only objection made thereto by any of the creditors was that "some of the creditors expressed dissatisfaction and a desire to be heard in the matter of the fixation of the fees of the Receivers and their attorneys," and that

the only ground for this objection was that the order for the "interim" allowances "was obtained and the allowances [71] made without notice to *all* the creditors," and that thereafter Receiver Lieurance and Attorney Eliassen, "in the interests of harmony entered into a stipulation in this jurisdiction, agreeing to a reduction in the amount of such allowances on account," and that such stipulation provided "that the above-entitled court shall have the exclusive right to fix the compensation" of Receiver Lieurance and Attorney Eliassen "in this jurisdiction"; thereby making it appear, and intending to make it appear, that such allowances were made *with* notice to *some* of the creditors, and that the only objection urged against such allowances was upon the ground that they were made without notice to *all* of the creditors, and that it was contemplated by the creditors that further allowances should be made, but that they should not be made without notice to all of the creditors of the applications therefor, also, that Receiver Lieurance and Attorney Eliassen voluntarily agreed to a reduction in the amount of such allowances as soon as they learned that "some of the creditors expressed dissatisfaction and a desire to be heard in the matter of the fixation of the fees of the Receiver and their attorneys"; whereas, the objectors and exceptors represent and state to the Court that such representations and statements do not correctly convey to the Court the true facts in the premises, which are as hereinafter set forth, and not otherwise.

(a) On December 9, 1926, certain of the representatives of the western creditors received a telegram stating, in substance, that applications for temporary or interim allowances in favor of Receiver Gotthold in the sum of $10,000 and in favor of the eastern attorneys for the Receivers in the sum of $10,000 had been made in the original or parent receivership proceedings pending in the United States District Court for the Southern District of New York and stating that the Judge of such court had invited suggestions from the committee of the creditors, [72] and requesting the representatives of the western creditors to whom such telegram was addressed to see Receiver Lieurance and Attorney Eliassen and ascertain what their respective charges would be, and advise the New York committee of the eastern creditors of the results of such conference with Receiver Lieurance and Attorney Eliassen so that the same could be included in the recommendation to the Judge of the United States District Court for the Southern District of New York.

(b) Pursuant to the above-mentioned telegram and the request therein contained, a conference was held on December 9, 1926, between Receiver Lieurance, Attorney Eliassen, and certain representatives of the western creditors; and it was mutually agreed between all parties to such conference, in substance, that the allowances asked for by Receiver Gotthold and his attorneys were excessive; that the views of the members of the western creditors' committee should be ascertained and pre-

sented to the several courts respectively, before any action should be taken concerning any of the allowances to either of the Receivers or their attorneys respectively; that while the views of the members of the western creditors' committee were being obtained, Receiver Gotthold and his attorneys, together with the New York members of the eastern creditors' committee should be asked to request the Judge of the eastern jurisdiction to postpone action until all interested parties both east and west, could exchange views and agree upon the gross amounts to be asked for by the Receivers and their respective attorneys in all jurisdictions; and a telegram in accordance with this general understanding and agreement was drafted and agreed upon by Receiver Lieurance, Attorney Eliassen and the representatives of the western committee, and was transmitted to the chairman of the New York committee, such telegram being sent over the signature of Walton N. Moore, one of the representatives of the western committee who [73] participated in such conference.

(c) In violation of the arrangement and agreement entered into at the conference of December 9, 1926, hereinbefore mentioned, and without notice to, knowledge by or consent of any of the creditors of the defendant, or any of their representatives respectively, on December 10, 1926, Receiver Lieurance and Attorney Eliassen obtained, upon *ex parte* applications, allowances by the above named court, in favor of Receiver Lieurance (and Receiver Gotthold) in the sum of $10,000.00 and in favor of

Attorney Eliassen in the sum of $10,000.00; and immediately thereafter, and at divers times until and on December 16, 1926, and under the same general circumstances and conditions, obtained similar allowances in the other western jurisdictions, aggregating (with the allowances in this jurisdiction) the sum of $42,500.00 in favor of Receiver Lieurance (and Receiver Gotthold) and the sum of $27,500.00 in favor of Attorney Eliassen, being a gross total of such allowances in the sum of $70,000.

(d) None of the creditors had any notice or knowledge of any of such allowances until December 16, 1926, after all of them had been made, when the representatives of the western committee received information concerning the same and immediately communicated such information to the New York committee for the eastern creditors; and immediately all the creditors, and all of the several committees and representatives thereof, so far as known to the objectors and exceptors, vigorously protested against each and all of such allowances, not only upon the ground that the same were obtained without notice to any of the creditors but also upon the ground that they were obtained in flagrant violation of the understanding and agreement with Receiver Lieurance and Attorney Eliassen above mentioned, and upon the further ground that such allowances were grossly excessive, and Receiver Gotthold joined in such protest and the [74] above-mentioned grounds thereof.

(e) Thereafter, and on December 20, 1926, the above-mentioned representatives of the western

Creditors had a conference with Receiver Lieurance and Attorney Eliassen, at which conference the above-mentioned representatives of the western creditors, not only on behalf of the western creditors but on behalf of all of the creditors generally, protested against all of such allowances, and demanded of Receiver Lieurance and Attorney Eliassen that all of the orders for such allowances, respectively, be immediately vacated and set aside; in response to which, Receiver Lieurance and Attorney Eliassen promised to consider the matter, and return a definite answer on the following day, but they wholly failed to do so; whereupon, and on December 22, 1926, the representatives of the western committee again communicated with Attorney Eliassen upon the subject; and, notwithstanding the premises, Receiver Lieurance and Attorney Eliassen wholly neglected and refused to agree to the vacation of such orders of allowances, or to any modification thereof.

(g) Thereafter, and on December 29, 1926, Walton N. Moore, acting by and through his attorneys, presented to the Judge of the above-named court, a verified petition on behalf of the Walton N. Moore Dry Goods Co., one of the western creditors of the defendant in the sum of $29,316.07, and also on behalf of the other western creditors, and the eastern creditors, and the creditors generally, mentioned in the opening paragraph of these objections and exceptions; which petition accurately set forth the facts in the premises, asked that such orders of allowances be vacated, discharged and set aside;

and upon such petition, the attorneys for the petitioner therein made an informal motion for the issuance of an order to show cause why such petition should not be granted, addressed to Receiver Lieurance and Attorney Eliassen; but it was informally [75] suggested that before such order to show cause should be issued, such petition should be informally presented to Attorney Eliassen, to the end that the subject matter thereof might be discussed by the attorneys for Walton N. Moore and Attorney Eliassen, with a view to an amicable adjustment thereof, if the parties could agree thereto.

(h) Pursuant to the premises, and without formally filing such petition, or securing the issuance of any order to show cause thereon, later on said December 29, 1926, the attorneys for Walton N. Moore communicated with Attorney Eliassen, had an initial conference with him, delivered to him a copy of such petition, and thereafter negotiations were entered into and carried on from time to time until on or about April 15, 1927, at which time stipulations were finally agreed upon and entered into by the respective parties, which provided for a reduction of the several allowances made in the western jurisdictions, respectively, as hereinbefore stated, including the stipulation in this jurisdiction mentioned and referred to in the final Receivers' report and petition for the allowance of further fees and compensation in favor of Receiver Lieurance and Attorney Eliassen.

(i) The objectors and exceptors state that the

reduction of such allowances in this jurisdiction as well as in the other western jurisdictions was agreed to by Receiver Lieurance and Attorney Eliassen under the compulsion of the matters and facts set forth in the petition of Walton N. Moore hereinbefore mentioned, and was not agreed to by them voluntarily, "in the interests of harmony," excepting in the sense that Receiver Lieurance and Attorney Eliassen desired to placate the objecting and protesting creditors, and avoid giving them and further offense through a litigation of the issues tendered by the above-mentioned petition of Walton N. Moore. At the [76] time that such stipulations were signed, it was mutually understood by all of the parties thereto, as expressly provided in such stipulations, that while Receiver Lieurance and Attorney Eliassen should have the right to make application for further allowance of fees and compensation, if they should be so advised, nevertheless, that the creditors should have the right to object to any further allowances of fees or compensation in favor of either Receiver Lieurance or Attorney Eliassen; and both Receiver Lieurance and Attorney Eliassen knew that it was the intention of the eastern creditors to interpose objections and exceptions to the making of any further allowances in favor of either Receiver Lieurance or Attorney Eliassen.

(j) Virtually all of the time involved in the negotiations which resulted in the stipulations hereinbefore mentioned was consumed by discussions of the historical matters to be inserted in such

stipulations by way of preamble. Receiver Lieurance and Attorney Eliassen proposed forms of stipulation which, by implication, recited, in substance, the matters which they have included in the final report, and which are covered by this objection and exception. The petitioning creditor Walton N. Moore above mentioned, who signed such stipulations on behalf of certain of the creditors, objected to such proposed recitals of fact for the reason that they did not truthfully state the facts, and positively refused to sign any stipulations with such recitals included therein. After several months of negotiations and discussions upon the subject, the objectionable recitals were eliminated and the stipulations were signed and filed. Now, by their final report, Receiver Lieurance and Attorney Eliassen present, in substance, the same matters to the Court, and which do not accurately state or represent the true facts in the premises for the reasons hereinbefore stated.

(k) A copy of the petition of Walton N. Moore [77] hereinbefore mentioned is hereto attached, marked Exhibit "A," and is hereby made a part hereof. The objectors and exceptors hereby reallege each and all of the matters set forth in such petition, with the same force and effect as if set forth in *extenso.*

2. As to Receiver Lieurance.

(a) The original or parent receivership proceedings in the United States District Court for the Southern District of New York and the ancillary receivership proceedings in the four western juris-

dictions including the Northern District of California, were instituted, and Receivers Gotthold and Lieurance appointed therein, pursuant to an amicable arrangement and agreement between the creditors and the defendant; all of which is more particularly set forth in Exhibit "A" hereto attached and made a part hereof, to which reference is hereby made.

(b) The primary objects of instituting such receivership proceedings instead of liquidating the affairs of the defendant company in the bankruptcy proceedings instituted in the United States District Court for the Southern District of New York, as more particularly set forth in Exhibit "A," hereto attached, were (1) to afford the defendant company an opportunity to refinance and reorganize itself during the sixty-day period of the temporary receivership, which the defendant company hoped and expected to be able to do; or (2) in the event of the inability and failure of the defendant company to refinance and reorganize its affairs to liquidate the defendant company by means and methods which would reduce the expenses of liquidation which would normally be incurred if effected in the bankruptcy proceedings; all of which was well known and agreed to by all the parties including the Receivers Gotthold and Lieurance. Receiver Lieurance was selected and recommended by R. A. Pilcher, the president and active manager of the defendant [78] company, and accepted by the creditors' committee upon such recommendation.

(c) The maximum normal fees and compensa-

tion which would be allowed a trustee or receiver in bankruptcy, if the affairs of the defendant company had been liquidated in the bankruptcy proceedings, would be less than the sum of $10,000, covering all jurisdictions, including the eastern jurisdiction and the four western jurisdictions.

(d) The services rendered and performed by Receiver Lieurance were and are of a reasonable value less than the sum of $10,000, covering all jurisdictions, including the eastern jurisdiction and the four western jurisdictions. Receiver Lieurance has already received $15,000 for such services; and Receiver Gotthold has received the sum of $7,500 for his services as Receiver in the eastern jurisdiction, and makes no claim for any fees or compensation for services in any of the western jurisdictions.

(e) The services rendered and performed by Receiver Lieurance in the above-entitled proceeding in the Northern District of California were and are of a reasonable value less than the sum of $3,500; and the maximum fee and compensation which would be allowed a trustee or a Receiver in bankruptcy for similar services would be considerably less than such sum of $3,500, and Receiver Lieurance has already received the sum of $3,500 on account thereof.

(f) The objectors and exceptors deny that Receiver Lieurance, "ever since his appointment as receiver herein has neglected his own affairs and devoted his time and efforts to the affairs of this estate" as stated in the final report. On the con-

trary, the objectors and exceptors are credibly informed and believe and therefore state the fact to be that during all of such time Receiver Lieurance was virtually retired [79] from active business, and was living virtually a life of leisure, which was not materially interrupted by his duties as Receiver excepting during the months of August, September and October, 1926, and even not wholly interrupted during those months. During the sixty-day period of the temporary receivership, R. A. Pilcher was employed to assist in the supervision of the affairs of the defendant company and for such services he was paid the sum of $750 per month by Receiver Lieurance. During the sixty-day period of the temporary receivership and during the greater part of the month of August, 1926, the efforts of all parties, including Mr. Pilcher and Receiver Lieurance, were directed mainly to the purpose of refinancing and reorganizing the defendant company; and that work was performed primarily for the benefit of Mr. Pilcher and the defendant company, although the creditors would have been incidentally benefited if those efforts had been successful. Several of the creditors and members of the creditors' committee aided in this work without compensation.

(g) The objectors and exceptors are credibly informed and believe and therefore state the fact to be, that a considerable portion of the conferences between Receiver Lieurance and Mr. Pilcher during the sixty-day period of the temporary receivership and also in the month of August, 1926, were devoted to efforts by Mr. Pilcher to induce

Receiver Lieurance personally to aid him in refinancing and reorganizing the defendant company.

(h) After it was ascertained that there was no hope of refinancing and reorganizing the defendant company, it was determined to dispose of all of the assets of the defendant company by bulk sales; and the western stores were operated only for a period of a few weeks until the several western stores could be advertised for sale, the bids received, and the highest bidders respectively determined and the sales concluded. This [80] work was all completed before October 31, 1926, since which latter date virtually no duties have devolved upon Receiver Lieurance in the premises other than the payment of the expenses of administration, and making of reports to the several courts, the distribution of dividends, and the rendering of a final account together with a final report, most of which consisted of clerical and accounting services, which were rendered by others employed by Receiver Lieurance for that purpose at the expense of the estate.

(i) In the performance of his services, Receiver Lieurance provided himself with ample assistance and facilities, which minimized the amount of his personal labors, and the expense of which is charged against the receivership; and, in addition to that, some of the members of the Creditors' Committees rendered important and valuable assistance, and particularly in the matter of formulating the policies and general methods to be pursued, all without any compensation whatever, and without any

expense to the receivership, thus carrying out the primary object of reducing the expenses which would have been incurred by a liquidation of the affairs of the defendant company in the bankruptcy proceedings.

3. As to Attorney Eliassen.

(a) There was no opposition to the appointment of the receivers in the ancillary proceedings instituted in the four western jurisdictions, or to the administration of such receiverships, respectively. Such ancillary receivership proceedings were instituted and thereafter conducted pursuant to the amicable arrangement and agreement between the creditors and the defendant company hereinbefore mentioned.

(b) The institution of such ancillary proceedings did not involve any original labor or research on the part of Attorney Eliassen. The complaints or petitions in such ancillary proceedings [81] were exact copies of the original complaint or petition prepared and filed by the eastern attorneys for the receivers in the original or parent proceedings instituted in the United States District Court for the Southern District of New York, with the addition of appropriate allegations setting forth the facts concerning the appointment of the receivers in the eastern jurisdiction with permission to institute ancillary proceedings in the western jurisdictions.

(c) Virtually all of the legal services required in the ancillary proceedings in the western jurisdictions and which were performed by Attorney

Eliassen were of a formal nature. There were a few collateral contested matters of minor importance but these matters did not involve complicated issues, or require services extending over any considerable length of time; nor did they involve any considerable portion of the estate, relatively speaking. While it is true that the formal matters required a considerable amount of labor, a large part thereof consisted of clerical and accounting services requiring only the supervision of Attorney Eliassen, and which were performed by others employed therefor at the expense of the estate.

(d) The actual reasonable value of the services performed by Attorney Eliassen, in all of the western jurisdictions, including the northern district of California, is less than the sum of $15,000; and Attorney Eliassen has already received the sum of $15,000; on account thereof. The actual reasonable value of all of the services rendered by Attorney Eliassen in the above-entitled proceeding in the Northern District of California is considerably less than the sum of $5,000 and he has already received $5,500 on account thereof.

III.

HEARING UPON THESE OBJECTIONS AND EXCEPTIONS, ETC.

(a) To present the evidence in support of these [82] objections and exceptions, it will be necessary to take oral testimony both in California and in New York City, and possibly in Oregon and Washington.

(b) The objectors and exceptors are credibly informed and believe, and therefore state the fact to be, that the New York Committee of the eastern creditors, and Receiver Gotthold concur in the objections and exceptions hereinbefore presented and the grounds in support thereof hereinbefore set forth, and desire to participate in the hearing of such objections and exceptions.

(c) Receiver Lieurance and Attorney Eliassen have filed final reports and petitions for the allowance of further fees and compensation in the three other western jurisdictions and hearing thereon have been set for divers times in August, 1926. The objectors and exceptors respectfully suggest that in passing upon the petition of Receiver Lieurance and Attorney Eliassen for the allowance of further fees and compensation, the action heretofore taken and hereafter to be taken in the other Western jurisdictions should be considered. The petitions for the allowance of further fees and compensation, filed in the four Western jurisdictions, are necessarily interrelated; a determination of them will require a consideration of virtually the same evidence; and a consideration and a hearing of them separately will necessarily multiply and greatly increase the expenses thereof. Therefore, the objectors and exceptors respectfully recommend that Receiver Lieurance and Attorney Eliassen be required to consent to a consolidation of all of such petitions, to be disposed of upon a single hearing, and thereby facilitate a just disposition thereof, and greatly reduce the expenses thereof;

WHEREFORE, the objectors and exceptors respectfully pray the Court: [83]

(1) That the Receivers' account, as to the item of $5,900.00 paid to Phillip A. Hershey & Co. on December 31, 1926, be disapproved and disallowed and that Receiver Lieurance be recharged therewith;

(2) That no further fees or compensation be allowed to Receiver A. F. Lieurance.

(3) That no further fees or compensation be allowed to Attorney Edward R. Eliassen.

(4) That a time be fixed for the hearing of these objections and exceptions, which will allow ample opportunity for the taking of testimony and the introduction of evidence; or, that the matter be referred to a Special Master if the Court be so advised.

(5) That, in the meantime, Receiver Lieurance and Attorney Eliassen be required forthwith to file with the clerk of this court all original contracts, documents, books of account, vouchers, checks issued by the receiver or receivers and returned as paid, and all other original records pertaining to such receivership, with leave to the objectors and exceptors to inspect the same; and that the objectors and exceptors or any other creditors of the defendant, be hereafter permitted to interpose any further objections and exceptions, if any ground therefor shall hereafter appear, the right to do so being hereby expressly reserved by these objectors and exceptors, not only on behalf of themselves, but on behalf of any and all of the creditors;

(6) That any and all of the other creditors of the defendant company be permitted hereafter to join in the objections and exceptions hereby interposed or hereafter to be interposed by these objectors and exceptors, and to introduce evidence in support thereof, if they be so advised;

(7) That the Court make such other and further [84] order and take such other and further action in the premises, as shall be equitable and just.

Dated: June 23, 1927.

WALTON N. MOORE DRY GOODS COMPANY.

By JOSEPH KIRK,
Its Attorney.

J. H. NEWBAUER & COMPANY,
By J. H. NEWBAUER,
President.

G. W. REYNOLDS, INC.,
By JOSEPH KIRK,
Its Attorney.

L. DINDELSPIEL COMPANY, INC.,
By E. F. FAHRBACH,
Vice-president.

FRANCIS J. HENEY,
JOSEPH KIRK,
Attorneys for Above Petitioners. [85]

State of California,
City and County of San Francisco,—ss.

E. F. Fahrbach, being first duly sworn, deposes and says that he is the vice-president of L. Dinkelspiel Company, Inc., a corporation, and one of the

creditors named in and who signed the foregoing objections and exceptions; that he has read the said objections and exceptions and knows the contents thereof; that the same is true of his own personal knowledge excepting as to the matters therein stated on information and belief and as to those matters he believes it to be true.

By E. F. FAHRBACH,

Subscribed and sworn to before me this 27 day of June, 1927.

[Seal] C. J. DORAN,

Notary Public in and for the City and County of San Francisco, State of California. [86]

EXHIBIT "A."

In the United States District Court, in and for the Northern District of California.

(IN EQUITY—No. 1707.)

SIDNEY GILSON, HERMAN AVRUTINE and SAMUEL AVRUTINE, Copartners Engaged in Business as NATIONAL GARMENT CO.,

Complainants,

vs.

R. A. PILCHER CO., INC.,

Defendant.

PETITION IN ANCILLARY PROCEEDINGS, RECEIVERS, ETC.

The undersigned, Walton N. Moore (hereinafter mentioned and referred to as "Petitioner"), respectfully presents to the Court this petition, on behalf of Walton N. Moore Dry Goods Company, a creditor of the above-named defendant in the sum of $29,316.07, and also on behalf of 55 other California creditors of the defendant whose claims aggregate $65,809.12; also on behalf and for the benefit of the New York Committee of the eastern creditors of the defendant and which committee represents creditors whose claims aggregate more than three-fourths of the total indebtedness of the defendant; and also on behalf and for the benefit of all of the creditors of the defendant, generally; and, in that behalf, the petitioner respectfully represents and states to the Court:

I.

CIRCUMSTANCES LEADING TO ELECTION OF A COMMITTEE OF DEFENDANT'S CREDITORS.

(*2*) On or about May 1, 1926, the above-named defendant, R. A. Pilcher Co., Inc., became and was unable to meet its maturing obligations: which condition (as defendant then and thereafter represented) was caused largely, if not wholly by the fact that the defendant had rapidly expanded its business until [87] it had reached a volume

which was beyond the capacity of its working capital.

(b) By reason of the premises, hereinbefore stated, on or about May 6, 1926, certain of the stockholders of the defendant, for the purpose of increasing the permanent working capital of the defendant, purchased additional capital stock of the defendant, in the aggregate sum of $75,000, which sum was paid to the defendant in cash and became and thereafter remained a part of the cash assets of the defendant, and thereafter was turned over, as a part of the assets of the defendant, to the receivers appointed, as hereinafter set forth.

(c) Notwithstanding the increased capital provided as hereinbefore stated, the defendant became and was subjected to increased pressure by certain of its creditors; the financial affairs of the defendant became more acute; and the defendant became and was threatened with legal proceedings, which, if they resulted in an immediate liquidation of the affairs of the defendant would necessarily subject the defendant and all of its creditors to an irretrievable loss.

(d) Because of the premises, on or about May 28, 1926, the defendant voluntarily communicated to its creditors the facts concerning its financial condition and affairs, hereinbefore set forth, and thereupon, on said May 28, 1926, a general meeting of the creditors of the defendant, whose claims exceeded in amount of the sum of $200.00, respectively, was held at New York City. A substantial majority

(in amount) of the total indebtedness of the defendant was represented at such meeting.

(e) The general meeting of creditors, hereinbefore mentioned, among other things elected a, committee, composed of five members, including this petitioner; and which committee, with some changes as to personnel, at all times thereafter has acted and still is acting, on behalf of the creditors of the [88] defendant. Hereinafter, such committee will be mentioned and referred to as the "Creditors' Committee."

II.

CREDITOR'S AGREEMENT, AND OTHER CIRCUMSTANCES LEADING TO RECEIVERSHIP PROCEEDINGS.

(a) The principal purpose for which the Creditors' Committee was created, was that, by appropriate agreement (1) among the creditors and (2) between the creditors and the defendant such committee should be invested with power to supervise and direct the business and affairs of the defendant, in the interest and for the benefit of all of the creditors of the defendant. Each of the members of the Creditors' Committee agreed to, and thereafter did, act and serve without compensation.

(b) Pursuant to the premises, hereinbefore set forth, on or about June 3, 1926, a certain agreement in writing was entered into by and between (1) the defendant, (2) certain of the stockholders of the defendant, and (3) the Creditors' Committee hereinbefore mentioned, by the terms of

which it was provided, among other things, that all of the voting stock of the defendant (and which constituted a majority of the outstanding "Class C" stock of the corporation) should be transferred and delivered to the Creditors' Committee, to be held by the Creditors' Committee so long as such agreement should remain in force for the purpose of controlling the conduct and operation of the defendant, and with authority to continue the business of the defendant, or to liquidate the same in accordance with certain terms and conditions specified in such agreement; and, among other provisions, contained a provision to the effect that such agreement should be submitted to the several creditors of the defendant for their approval and signature, whereby the creditors should become parties thereto; also a provision which authorized the Creditors' Committee to act for the defendant and creditors [89] in all actions, suits, bankruptcy proceedings, or other legal proceedings, affecting the defendant or any of its creditors.

(c) At the time of the execution of the written contract hereinbefore described, and as a part of the same general transaction, it was orally agreed by and between the Creditors' Committee and the defendant, among other things, (1) that one of the creditors represented by the Creditors' Committee should institute in the District Court of the United States, for the Southern District of New York a suit in equity, against the defendant herein, in which suit the plaintiff therein should file a bill

in equity or complaint setting forth the facts concerning the financial condition and affairs of the defendant, together with the threatened loss to the defendant and its creditors unless the assets of the defendant should be conserved by appropriate action upon the part of the Court and particularly by the appointment of a temporary receiver to take charge of and protect the assets of the defendant: (2) that the Creditors' Committee and the defendant should agree upon and recommend to the Court some suitable person or persons to act as receiver or receivers in the premises; (3) that thereafter, similar action should be taken by ancillary proceedings to be instituted in the District Court of the United States for the Eastern District of Washington, the Western District of Washington, the District of Oregon, and the Northern District of California; (4) that in each of such ancillary proceedings, due and proper application should be addressed to the court, to appoint as receiver or receivers, the same person or persons appointed in the proceedings to be instituted in the Southern District of New York as hereinbefore set forth; and (5) that in the meantime, bankruptcy proceedings should be instituted, if the same should be deemed advisable, to protect the assets of the defendant against intervening legal proceedings designed to gain preferential advantages over [90] the general creditors.

III.

RECEIVERSHIP PROCEEDINGS AND TRANSACTIONS INCIDENTAL THERETO.

(a) Pursuant to the premises hereinbefore set forth on or about June 3, 1926, the above-named plaintiff instituted in the United States District Court for the Southern District of New York, a suit against the above-named defendant, entitled as above, excepting as to the venue and the docket number thereof; and at the time of the institution of such suit, the Creditors' Committee and the defendant agreed upon and recommended to the court, the appointment of A. F. Lieurance of Oakland, Alameda County, California, and Arthur F. Gotthold, of New York City, as temporary receivers.

(b) Thereafter, and on said June 3, 1926, and upon the joint recommendation of the Creditors' Committee and the defendant, and not otherwise, by due proceedings had in the action instituted and then pending as hereinbefore stated, in the United States District Court for the Southern District of New York, the Honorable Augustus N. Hand, United States Judge presiding, an order was made and entered appointing A. F. Lieurance and Arthur F. Gotthold hereinbefore mentioned as temporary receivers in said action, authorizing and directing such receivers to take possession and charge of the affairs and assets of the defendant, and further authorizing such receivers, among other things, to institute ancillary proceedings in other jurisdictions.

(c) Thereafter, pursuant to the premises, and on or about June 9, 1926, the above-entitled proceeding was instituted in the above-entitled court, which proceeding was and is ancillary to the original proceeding instituted in the United States District Court for the Southern District of New [91] York, as hereinbefore stated; and thereafter, upon said June 9, 1926, and upon the verified petition of said A. F. Lieurance filed on behalf of himself and said Arthur F. Gotthold, an order was made and entered in the above-entitled proceeding, appointing said A. F. Lieurance and Arthur F. Gotthold temporary receivers of the above-named defendant and all of its property, assets and effects, upon the giving, by such receivers, of bonds in the sum of $10,000 each, which bonds were thereafter duly given and approved.

(d) Immediately and thereafter, pursuant to the premises, similar ancillary proceedings were instituted in the United States District Court for each of the following named districts, to wit: The Eastern District for the State of Washington, the Western District for the State of Washington, and the District of Oregon; each of which proceedings was entitled as above except as to the venue and docket number thereof; and in each of which ancillary proceedings, upon the verified petition of said A. F. Lieurance filed on behalf of himself and said Arthur F. Gotthold, said A. F. Lieurance and Arthur F. Gotthold were appointed temporary receivers of the above-named defendant and all of its property, assets and effects, in the same general manner, with

the same general authority, and upon the same general terms and conditions, as in the above-entitled action, as hereinbefore set forth.

(e) Each of the orders appointing said A. F. Lieurance and Arthur F. Gotthold temporary receivers as hereinbefore stated, contained a provision, among others, whereby, in substance, such receivers were directed, within thirty days from the date of said orders, respectively, to mail to each and every creditor of the defendant a copy of such order and a notice of motion to make such receivership permanent.

(f) In the meantime, and on or about June ——, 1926, pursuant to an agreement between the Creditors' Committee [92] and the defendant and with the prior knowledge, approval and acquiescence of the temporary receivers A. F. Lieurance and Arthur F. Gotthold appointed as hereinbefore stated, proceeding in bankruptcy pertaining to the affairs and assets of the defendant were instituted; but no steps were ever taken in said bankruptcy proceedings to secure the appointment of a receiver or trustee for the affairs or assets of the defendant, and no further steps of any kind were had or taken in said bankruptcy proceedings for the purpose of administering or liquidating the estate of the defendant. The primary purpose of such bankruptcy proceedings was to stop the efforts of some of the smaller creditors who were attempting to secure preference by the institution of attachment or other legal proceedings.

(g) In the meantime, and at about the time of the institution of the proceedings in the United States District for the Southern District of New York, as hereinbefore stated, the Creditors' Committee communicated to each and all of the known creditors of the defendant the true facts in the premises for the purpose of inducing such creditors to approve, execute and become parties to, the agreement of June 3, 1926, hereinbefore mentioned and described.

(h) The primary purpose of the receivership proceedings herein mentioned, including the permanent receivership hereinafter mentioned, together with the bankruptcy proceedings hereinbefore mentioned was to obviate a waste of the assets of the defendant available to satisfy the indebtedness of the defendant to its creditors, through the payment of fees and expenses to referees, receivers and trustees in bankruptcy, and counsel fees incident thereto, which would be likely to be incurred if the affairs of the defendant were administered and liquidated otherwise than through receivership proceedings instituted in equity as hereinbefore stated; all of which was known and [93] agreed to by the Creditors' Committee and the defendant, and was known to and approved by, the receivers A. F. Lieurance and Arthur F. Gotthold, appointed as hereinbefore stated.

(i) In the meantime, the desired number of the creditors of the defendant having failed to execute and become parties to the agreement of June 3, 1926, hereinbefore mentioned, said receivers A. F.

Lieurance and Arthur F. Gotthold, prior to the expiration of the thirty days period after the date of the orders appointing them receivers as hereinbefore stated, gave written notice to the creditors of the defendant required by the orders appointing them receivers as hereinbefore stated and took such further proceedings, that on or about August 9, 1926, their appointment as such receivers was made permanent.

(j) Thereafter, and pursuant to the premises, said receivers, with the advice and aid of said Creditors' Committee, proceeded to and did liquidate the affairs and assets of the defendant, and on December 9, 1926, stated and reported to the court in said original and ancillary proceedings, respectively, that they had on hand as such receivers approximately $475,000. This petitioner is informed and believes and therefore alleges that a portion of such amount is in the personal custody or possession of receiver Gotthold in New York City and the balance thereof is in the personal custody or possession of receiver Lieurance at Oakland, California.

IV.

PROCEEDINGS BY THE RECEIVERS AND THEIR ATTORNEYS TO SECURE PAYMENTS ON ACCOUNT OF SERVICES AND FEES.

(a) On December 7, 1926, upon the application and motion of receiver Gotthold and his attorneys at New York City, an order was entered in the pro-

ceedings pending in the United States District Court for the Southern District of New York as hereinbefore stated, directing among other things, the payment of a 40% dividend to the creditors of the defendant. Upon the [94] same day, receiver Gotthold and his attorneys applied to the last named court for an allowance and payment of $10,000 to receiver Gotthold on account of his fees and compensation and the sum of $10,000 to his attorneys on account of services rendered.

(b) On December 9, 1926, this petitioner received a telegram from William Fraser, the New York member (and chairman) of the Creditor's Committee informing this petitioner of the order directing payment of dividend to the creditors as hereinbefore stated, and further informing this petitioner that Receiver Gotthold and his attorneys had applied for allowances and payments on account as hereinbefore stated; and said telegram contained the following:

> "Judge Hand invited suggestions from Committee. After consultation we told him that without knowing what allowance Lieurance and his counsel would seek in western jurisdiction committee was not in position to make recommendation. . . . Please get in touch with Love. See Lieurance and Eliassen. Find out if possible what charges will be. Advise results by wire because we want to include your views in recommendation to Judge Hand."

(c) Immediately upon receiving such telegram, this petitioner communicated the contents thereof to Receiver Lieurance and his attorney Edward R. Eliassen, and an appointment was then made, pursuant to which, during the afternoon of December 9, 1926, a conference was held in the office of Joseph Kirk, Esq., attorney for the Board of Trade of San Francisco (such Board of Trade being the representative of many of the western creditors of the defendant), which conference was attended and participated in by Receiver Lieurance, his attorney, Edward R. Eliassen, Joseph Kirk and this petitioner. At such conference after a thorough discussion of the subject, it was mutually agreed by all of the parties to such conference, that the allowance asked for by Receiver Gotthold and his attorneys were excessive; that the view of the members of the western Creditors' Committee should be ascertained and presented to the courts respectively before [95] any action should be taken concerning allowances to the Receivers or their attorneys respectively; that this petitioner should immediately enter into communication with the members of such Committee, for the purpose of ascertaining and communicating their views in the premises; and that in the meantime the New York Receiver and his attorney, together with the New York members of the Creditors' Committee, should be asked to request Judge Hand to postpone action upon the question of making allowances to the Receivers and their attorneys, respectively, until the

Receivers, their attorneys and the members of the Creditors' Committee could exchange views and agree upon the gross amount to be asked for in all jurisdictions. Thereupon, Receiver Lieurance, his attorney Edward R. Eliassen, Joseph Kirk, and this petitioner agreed upon and drafted a telegram to be, and which thereafter and upon said December 9, 1926, was, transmitted to William Fraser in response to the latter's telegram of December 8, 1926, hereinbefore mentioned. The telegram addressed to William Fraser, the wording of which was agreed upon by Receiver Lieurance and his attorney Edward R. Eliassen, as hereinbefore stated, contained the following:

> "To avoid possible conflict between Eastern and Western courts as to amounts of allowances to Receivers and their attorneys, as chairman of Creditors' Committee here and member of New York Committee, I earnestly request that question of such allowance be deferred for time being until Receivers and attorneys and committee can exchange views and come to some agreement concerning gross amount to be asked for."

(d) Immediately after the conference of December 9, 1926, hereinbefore described, this petitioner entered into communication with the other members of the Western Creditors' Committee and other interested parties for the purpose of ascertaining their views upon the question of allowances to the Receivers and their attorneys, respectively;

all pursuant to the arrangement agreed upon at the conference of December 9, [96] 1926, hereinbefore mentioned.

(e) Notwithstanding the premises, immediately after the conference of December 9, 1926, hereinbefore mentioned, and on December 10, 1926, and at divers times thereafter until and on December 16, 1926, Receiver Lieurance and his attorney Edward R. Eliassen, presented to the several courts in the western jurisdictions hereinbefore named, respectively, applications for allowances of payments to Lieurance and his attorney Eliassen, respectively and obtained from each of such courts, respectively, orders making such allowances, as follows:

ALLOWANCES TO RECEIVER LIEURANCE:

Northern District of California,	$10,000
District of Oregon	14,500
Western District of Washington	13,000
Eastern District of Washington..	5,000
TOTAL	$42,500

ALLOWANCES TO RECEIVER'S ATTORNEY EDWARD R. ELIASSEN:

Northern District of California ..	$10,000
District of Oregon	10,000
Western District of Washington.	5,000
Eastern District of Washington .	2,500
TOTAL	$27,500

(f) Each of said allowances was applied for and obtained in violation of said arrangement and agree-

ment entered into at the conference of December 9, 1926, hereinbefore mentioned, and without notice to, knowledge by, or consent of this petitioner or (as this petitioner is informed and believes) any of said Western Creditors' Committee, or any of the other Creditors' Committees, or, so far as this petitioner is informed and believes, any of the creditors of the defendant.

(g) This petitioner has no knowledge or information concerning the representations or statements made by Receiver Lieurance and his attorney Edward R. Eliassen to the courts [97] in the Eastern District of Washington or the Western District of Washington or the District of Oregon; but the statements and representations made by Receiver Lieurance and his attorney Edward R. Eliassen to the above-named court and upon the order of the above-named courts making such allowances were misleading and deceptive in the particulars, among others, hereinafter set forth.

(h) On December 10, 1926, Receiver Lieurance and his attorney Edward R. Eliassen presented to the Honorable A. F. St. Sure, as presiding judge of the above-named court, a petition praying for an order (among other things) authorizing the Receivers to pay to Edward R. Eliassen "such allowance on account of attorney's fees as to this court may seem reasonable and proper; also fixing and allowing the sum to be paid at this time on account of Receiver's fees." Such petition contained certain statements of facts and representations intended and designed to influence the decision and

action of the court in the premises, which representations and statements included the following:

> "That Edward R. Eliassen, Esq., has represented and does now represent both the Receivers and has acted as their attorney during the entire administration in all of the Western jurisdictions. He had been paid nothing on account of such services and the Receivers desire that they be authorized by the above-entitled Court to make payment of a reasonable sum on account, to him at this time. All of the stores of the defendant corporation were here in the Western jurisdiction; all of the business in connection with the said stores and the legal work connected therewith, and the administration of the estate in this Western Jurisdiction has been attended to by him. The amount of work involved has been considerable. And we therefore, recommend that such payment be made at this time to him on account, as the Court may deem fair and reasonable.
>
> That the Receivers have not paid themselves anything on account of their services so far; that the condition of the estate and the value of the services performed warrant, we submit, a payment now on account of such services rendered." [98]

(i) Influenced by and relying upon the statements and representations contained in said petition, including the statements and representations above quoted, on December 10, 1926, the Honor-

able A. F. St. Sure, as Judge of said United States District Court made an order in the premises containing, among other things, the following provisions:

> "That Edward R. Eliassen, Esq., attorney for the Receivers be paid immediately the sum of $10,000 to apply on account of services rendered.
>
> That the sum of $10,000 be paid to apply on account of Receiver's services; to be divided 75% thereof to Receivers A. F. Lieurance and 25% thereof to Arthur F. Gotthold, his co-receiver."

(j) By the statements and representations above quoted, Receiver Lieurance and his attorney Edward R. Eliassen represented and apparently intended to induce the above-named court to understand and believe, that the allowances to be made by the above-named court to Receiver Lieurance and his attorney Edward R. Eliassen, respectively, would be based upon, and in consideration of, the services rendered by Receiver Lieurance and his attorney Edward R. Eliassen in all of the western jurisdictions; whereas in truth and in fact it was then their intention also to apply to each of the other western jurisdictions for similar allowances for fees and services, and immediately thereafter they did so apply.

(k) The petition presented to the above-named court on December 10, 1926, as hereinbefore stated, contained a further statement, in substance, to the effect that the attorneys who represented the Re-

ceivers in the proceedings pending in the United States District Court for the Southern District of New York, hereinbefore described, had made application for an allowance on account of services rendered, and concluded with the following statement, with reference thereto:

> "and we are informed that the allowance requested is the sum of $10,000;"

but said petition failed to disclose the fact that the chairman of the New York Creditors' Committee had sent a telegram to [99] this petitioner stating that Judge Hand requested the views of the members of the Creditors' Committee before taking action upon said application for allowance of attorney's fees; and failed to disclose the fact that Receiver Lieurance, his attorney Edward R. Eliassen, Joseph Kirk, as attorney for the Board of Trade and many of the western creditors, and this petitioner as chairman of the western Creditors' Committee and a member of the New York Creditors' Committee had agreed that the allowance asked for by Receiver Gotthold and his attorneys were excessive and that no action would be taken with reference to the allowance of payments to the Receivers or their attorneys, respectively, until the Creditors' Committees should exchange views among themselves and with the Receivers and their attorneys, and agree upon the gross amount of fees to be asked for in all jurisdictions; and failed to disclose the fact that this petitioner, with the approval and acquiescence of Receiver Lieurance and his attorney Edward R. Eliassen, had sent to the chair-

man of the New York committee a telegram asking that the Judge of the New York court be requested to postpone action in the premises until the views of the Creditors' Committee could be ascertained and communicated to the court; all of which took place on the preceding day, December 9, 1926, at the office of Joseph Kirk as hereinbefore stated; and by the statements and representations contained in said petition, and otherwise, Receiver Lieurance and his attorney Edward R. Eliassen concealed from this court the fact which was well known to them and had been approved by them as hereinbefore stated, that the members of the Creditors' Committee desired to present their views in the premises to the several courts, respectively, before any action should be taken by any of the several courts, concerning the matter of making allowances for fees or services to either of the Receivers or their attorneys respectively. [100]

(I) By said petition, and the statements and representations made therein, Receiver Lieurance and his attorney Edward R. Eliassen represented to this court that the Eastern Receiver, Arthur P. Gotthold should receive one fourth of the amount ordered by this court to be paid to the receivers as above stated; whereas as both Receiver Lieurance and his attorney Edward R. Eliassen well knew, Receiver Gotthold had never rendered any services whatever in any of the western jurisdictions, and this petitioner is informed by Receiver Gotthold and believes and therefore alleges that it then was and for a long time prior thereto had been understood

and agreed by and between Receiver Gotthold and Receiver Lieurance that Receiver Gotthold should retain all of the moneys allowed by the United States District Court for the Southern District of New York for Receivers' fees, with no participation therein by Receiver Lieurance, and that Receiver Lieurance should retain all of the moneys allowed by the several United States District Courts in the western jurisdictions hereinbefore named, for Receivers' fees, with no participation therein, or any thereof by Receiver Gotthold. This petitioner is informed by Receiver Lieurance and his attorney Edward R. Eliassen, and believes that the orders obtained in the other western jurisdictions contained provisions for the participation by Receiver Gotthold in the allowances made as hereinbefore stated; the order so made by the United States District Court for the Western District of Washington being to the effect that the division of the fees should be definitely fixed at the time of the final allowance of fees, while the orders so made in the other two jurisdictions provided for definite and specific amounts in favor of Receiver Gotthold. This petitioner is further informed by the New York attorneys for Receiver Gotthold and believes, and therefore alleges, that immediately after procuring the several allowances hereinbefore mentioned, [101] Receiver Lieurance sent to Receiver Gotthold at New York City a telegram requesting Receiver Gotthold immediately to assign to Receiver Lieurance all of the interest of Receiver Gotthold in all of the allowances so made in the Western jurisdic-

tions to Receiver Lieurance. This petitioner therefore alleges that Receiver Lieurance secured said several allowances *ob*stensibly for the benefit of Receiver Gotthold, but in fact for the concealed but sole and exclusive benefit of himself, Receiver Lieurance.

V.

DISCOVERY BY PETITIONER OF THE ALLOWANCES OBTAINED BY RECEIVER LIEURANCE AND HIS ATTORNEY AND SUBSEQUENT TRANSACTIONS IN RELATION THERETO.

(a) On December 16, 1926, this petitioner was engaged in securing the views of the members of the Creditors' Committee for the purposes hereinbefore stated; Judge Hand had postponed action concerning the matter of making allowances in favor of Receiver Gotthold and his attorney until the views of the several Creditors' Committees were ascertained and communicated to him, in compliance with a request and recommendation made by the New York Creditors' Committee pursuant to the telegram of December 9, 1926, hereinbefore mentioned; all pursuant to the understanding and agreement entered into by and between Receiver Lieurance, his attorney Edward R. Eliassen, Joseph Kirk and this petitioner as hereinbefore set forth.

(b) On said December 16, 1926, after Receiver Lieurance and his attorney Edward R. Eliassen had obtained all of the allowances in favor of themselves as hereinbefore stated, and not before, Re-

ceiver Lieurance sent from Portland, Oregon, to this petitioner at San Francisco, California, the following telegram:

> "Work completed here this morning stop orders obtained all jurisdictions pay forty percent dividends stop allowance to attorney California ten thousand Spokane twenty five hundred [102] Seattle five thousand Portland ten thousand total twenty seven thousand five hundred stop allowance to Receivers California ten thousand dividend seventy five and twenty five percent Spokane five thousand division to be made at final hearing Seattle thirteen thousand dividend twelve and one Portland fourteen thousand five hundred dividend thirteen five and one total forty two thousand five hundred stop phoned above information to Mr. Love this morning stop will be home Saturday."

(c) Prior to the receipt of the telegram last above mentioned, neither this petitioner nor, as this petitioner is informed and believes, any other member of the several Creditors' Committees nor any of the individual creditors of the defendant had any knowledge or information that Receiver Lieurance and his attorney Edward R. Eliassen or either of them had been applying for or obtaining any allowances, or taking any other action whatever concerning the question of allowances in favor of the receivers and their respective attorneys or either of them. On the contrary, this petitioner understood and believed, and this petitioner is informed and

believes that all of the other members of the several Creditors' Committees and all other of the interested parties understood and believed, that Receiver Lieurance and his attorney Edward R. Eliassen were in good faith carrying out the understanding and agreement entered into at the conference of December 9, 1926, hereinbefore mentioned.

(d) Immediately after receiving the telegram from Receiver Lieurance last hereinabove mentioned this petitioner transmitted to William Fraser, chairman of the New York Creditors' Committee:

> "Telegram received. stop. To my utter astonishment I received following telegram today from Receiver Lieurance at Portland quote work completed here this morning stop orders obtained all jurisdictions pay forty percent dividends stop allowance to attorney California ten thousand Spokane twenty five hundred Seattle five thousand [103] Portland ten thousand total twenty seven thousand five hundred stop allowance to Receivers California ten thousand dividend seventy five and twenty five percent Spokane five thousand division to be made at final hearing Seattle thirteen thousand dividend twelve and one Portland fourteen thousand five hundred divided thirteen five and one total forty two thousand five hundred stop phoned above information to Mr. Love this morning stop will be home Saturday end quote Receiver Lieurance and his attorney were present when telegram of December ninth to you

was prepared and consented thereto stop in view of this fact we consider applications for allowances in western jurisdiction which were made without any notice to Creditors' Committee here as being unwarranted and in violation of understanding stated in telegram of December ninth. Stop. We contemplate making immediate application to western courts to set aside the allowances as excessive and exorbitant and to give creditors full opportunity of being heard with respect to the allowances stop. Will your committee join in making this application or request to western courts and bear their share of expenses and fees indicent thereto."

(e) Thereafter and on December 17, 1926, the members of the New York Committee presented to Judge Hand their recommendations concerning the question of allowance in favor of receiver Gotthold and his attorneys; and thereafter, and upon the same day Judge Hand made an order allowing the sum of $5,000 in favor of receiver Gotthold and $7500.00 in favor of his attorneys.

(f) In response to this petitioner's telegram to William Fraser dated December 16, 1926, hereinbefore mentioned, this petitioner has received telegrams from William Fraser, Chairman of the New York Creditors' Committee, and from Receiver Gotthold and his attorneys, condemning and repudiating the action of Receiver Lieurance and his attorney Edward R. Eliassen hereinbefore set forth, and stating that the New York Creditors' Committee is desirous of joining with the western Creditors'

Committee in submitting to the respective courts in the western jurisdictions applications for a reconsideration of the allowances made in favor of Receiver Lieurance and his attorney Edward R. Eliassen as hereinbefore set forth, with notice to the creditors and opportunity for them to present their views. [104]

(g) Shortly after the return of Receiver Lieurance and his attorney Edward R. Eliassen from Portland, Oregon, to Oakland, California, and on December 20, 1926, this petitioner and Joseph Kirk (Attorney for the Board of Trade of San Francisco and for a large number of the Western Creditors) had a conference with Receiver Lieurance and his attorney Edward R. Eliassen at the office of Joseph Kirk in the City of San Francisco, and in such conference this petitioner and Joseph Kirk charged Receiver Lieurance and his attorney Edward R. Eliassen with having applied for and obtained allowances (as hereinbefore stated) which were not only grossly excessive, and unfair to the creditors of the defendant and all of the other parties interested in the affairs and assets of the defendant, but also with having made such applications and having secured such allowances, in violation and disregard of the understanding and agreement entered into by and between Receiver Lieurance, his attorney Edward R. Eliassen, Joseph Kirk and this petitioner, at the conference of December 9, 1926, and the telegram with reference thereto sent to William Fraser, with the approval of Receiver Lieurance and his attorney Edward R.

Eliassen, as hereinbefore set forth; and demanded of Receiver Lieurance and his attorney Edward R. Eliassen that they consent that all of said orders for allowances to them, respectfully made by the courts in the several western jurisdictions respectively, as hereinbefore set forth, should be vacated and set aside, and that hearings upon the question of such allowances should be appointed by the several courts in said western jurisdictions, respectively, of which the creditors and other parties interested in the premises should have due and amply notice with opportunity to be heard. In response thereto, Receiver Lieurance and his attorney Edward R. Eliassen promised this affiant and Joseph Kirk to consider the matter and return a definite answer to this petitioner and Joseph Kirk on the morning of the following day, [105] December 21, 1926. Receiver Lieurance and his attorney Edward R. Eliassen failed to make any response, in fulfillment of their promise as hereinbefore set forth, or otherwise. Thereupon, and on December 22, 1926, this petitioner communicated with Edward R. Eliassen, but he failed and omitted to give any definite answer or response to the demand made upon him and Receiver Lieurance as hereinbefore stated. Excepting as hereinbefore stated, this petitioner has never had any communication with or from either Receiver Lieurance or his attorney or Edward R. Eliassen, since December 16, 1926; and this petitioner is informed by Mr. Kirk and believes and therefore alleges, that except as hereinbefore stated, Mr. Kirk has had no communication with

or from either Receiver Lieurance or his attorney Edward R. Eliassen excepting as hereinbefore set forth.

VI.

EXCESSIVE ALLOWANCE MADE TO RECEIVER LIEURANCE AND HIS ATTORNEY EDWARD R. ELIASSEN.

(a) This petitioner is informed and believes and therefore alleges, that the allowances made in favor of Receiver Lieurance and his attorney Edward R. Eliassen respectively, in the above-entitled proceeding, as hereinbefore set forth, were and are grossly excessive. The information upon which this allegation is made is in part, next hereinafter set forth.

(b) If the insolvent estate of the defendant had been administered in the Bankruptcy Court, the commissions allowed to the trustee would not have exceeded the sum of $5,000 and in that behalf, this petitioner further states that by virtue of the rules on General Orders in Bankruptcy promulgated by the United States Supreme Court, and particularly by reason of Rule XLII, no allowance for compensation to either a trustee or his attorney could be made without a petition in that behalf being filed, which petition would be heard and acted upon at a [106] meeting of the creditors duly called for that purpose and not otherwise.

(c) This petitioner is informed by Messrs. McManus, Ernst & Ernst, New York Attorneys for Receiver Gotthold that they consider such allowances to be exorbitant and excessive.

(d) This petitioner is informed by Receiver Gotthold that in his opinion such allowances are excessive, and that it is his desire that such allowances be reconsidered, and, as finally fixed shall be such as will meet with the approval of the creditors.

(e) This petitioner is further informed by Messrs. McManus, Ernst & Ernst, New York attorneys for Receiver Gotthold that Receiver Gotthold will not accept but will renounce all of the fees allowed to him in the Western jurisdiction as hereinbefore set forth.

(f) This petitioner is informed by the attorneys for many of the western creditors that such allowances are exorbitant and excessive and should be very substantially reduced.

VI.

STATEMENTS MADE ON INFORMATION AND BELIEF.

(a) The statements hereinbefore made concerning the financial affairs of the defendant, and the agreements entered into between the Creditors' Committee, the defendant, Receiver Lieurance and his attorney Edward R. Eliassen, are based upon information received by this petitioner as a member of the Creditors' Committee, and upon information received by this petitioner from other members of the Creditors' Committee, and from others who were in a position to have personal knowledge concerning the same and this petitioner believes such statements to be true. [107]

(b) The statements hereinbefore made concerning proceedings in court are based upon the records and files of such courts, together with advice of counsel concerning the true meaning and effect thereof, and this petitioner believes them to be true.

WHEREFORE, this petitioner, on behalf of Walton N. Moore Dry Goods Co., and on behalf of the California Committee of the Creditors of the defendant and of said New York Creditors' Committee, and on behalf of Receiver Gotthold and the New York attorneys for said Receivers, and for the benefit of all of the creditors of the defendant, generally, if they be so advised, prays that the orders of allowance to said Receivers and to said attorneys Edward R. Eliassen made herein on or about December 10, 1926 as hereinbefore set forth, be vacated, discharged and set aside; that a time and place be now set and fixed for the hearing of the application of said Receivers and of said Edward R. Eliassen for allowance on account of compensation or fees, and that due notice of said application and of said time and place for the hearing thereof be sent by said Receivers by mail to all of the known creditors of the defendant.

WALTON N. MOORE,
Petitioner.

JOSEPH KIRK,
FRANCIS J. HENEY,
Attorneys for Petitioner.

(Duly verified by Walton N. Moore.)

[Endorsed]: Filed June 27, 1927. [108]

[Title of Court and Cause.]

ANSWER OF RECEIVERS TO OBJECTIONS AND EXCEPTIONS TO FINAL ACCOUNT AND REPORT OF RECEIVERS FILED IN THE ABOVE-ENTITLED PROCEEDING ON BEHALF OF CERTAIN CREDITORS MENTIONED IN THE WRITTEN OBJECTIONS FILED.

Comes now, Receiver A. F. Lieurance and answers the objections and exceptions to final account and report of the Receivers heretofore filed and for answer thereto, denies, alleges and avers as follows, to wit:

ANSWER TO GENERAL OBJECTIONS AND EXCEPTIONS TO BOTH FINAL ACCOUNT AND FINAL REPORT.

(a) The said Receiver A. F. Lieurance having no information or belief upon the subject sufficient to enable him to answer that portion of Paragraph A on page 2 concerning information received by objectors and basing his denial upon that ground denies that the objectors and exceptors are credibly informed and—or believe, that Arthur F. Gotthold, one of the Receivers herein, has never authorized the making or filing of said Receiver's final account and/or final report, or either thereof, in the form in which they were filed, and/ [109] or that he has never concurred therein, and/or does not now concur therein, and/or on the contrary he objects

and/or excepts to such final account, final report, and petitions for the allowances of further fees and compensation in favor of Receiver Lieurance and Attorney Eliassen. But in this connection, said Receiver A. F. Lieurance alleges that in a letter addressed by him to his Co-receiver, Mr. Gotthold under date March 24, 1927, he stated, among other things, "As we anticipate filing our accounts with the courts very shortly"; that on March 28, 1927, Mr. Gotthold acknowledged receipt of Mr. Lieurance's letter but made no objection to the preparation and filing of the account; that on April 6, 1927, Mr. Gotthold wired to Mr. Lieurance as follows:

> "Please wire have you filed accounting in Ancillary jurisdictions, and if so, send copy air mail";

that in reply to said telegram and on April 6th, Mr. Lieurance sent a wire to Mr. Gotthold, among other things, stating as follows:

> "Accounts are being made up as soon as completed copy will be forwarded you air mail";

that on April 7, 1927, Mr. Gotthold wrote Mr. Lieurance as follows:

> "I trust the accounts can be completed and filed promptly,"

that on April 16, 1927, Mr. Gotthold wrote to Mr. Lieurance saying, among other things, as follows:

> "I hope that before this letter reaches you, I shall have received the accounts referred to in our recent correspondence."

that on April 22, 1927, Mr. Lieurance by letter informed Mr. Gotthold, as follows, to wit:

> "I have found it quite a task to make a detailed and itemized statement of all of the transactions in connection with the operation of the stores and the receivership in general and the making of this itemized report has taken more time than we anticipated, however, [110] this work is now nearing completion and we hope to file our accounts in the courts in the Ancillary jurisdictions within the next ten days. Just as soon as the account is ready for filing, I shall send to you a complete copy."

That on June 1st, 1927, telegram was received by Mr. Lieurance from Mr. Gotthold, reading, among other things, as follows:

> "Received today copy final account and notice of hearing."

That at no time either before the filing of the account or since its filing, has Mr. Gotthold made any objections either to the filing of the account and report by Mr. Lieurance, nor to the payment already made to Phillip A. Hershey & Company of the sum of $5,900, objected to under Item I in Paragraph B on pages 3 and 4, and that in this connection, Mr. Gotthold has not communicated to Mr. Lieurance any objection to the said account or report or petition for fixation of further fees and compensation of Receiver Lieurance and attorney, Edward R. Eliassen.

Receiver Lieurance further avers in this connec-

tion that Mr. Gotthold in reply to a telegram sent him, asking if objections and exceptions filed on his alleged behalf were previously authorized by him or whether they were made with his approval replied by wire as follows:

> " * * * Exceptions and objections were filed without submission to me."

In a telegram sent by Mr. Gotthold to Mr. Lieurance, under date of July 6, 1927, he stated, among other things:

> "Regret the delay very much. Can you not make effort to reach adjustment with attorney for creditors committee without necessity protracted and expensive court proceedings."

In this connection Mr. Lieurance avers that said wire indicates clearly that Mr. Gotthold is not now nor has he objected to the [111] application for further fees and allowances but that he hopes such fees and allowances can be agreed upon between the objectors and the Receiver A. F. Lieurance and his attorney.

ANSWERING PARAGRAPH B ON PAGE 3 OF THE WRITTEN OBJECTIONS AND EXCEPTIONS:

Said Receiver A. F. Lieurance having no information or belief upon the subject sufficient to enable him to answer that portion of the said objections as to the information received by objectors concerning the fee of the accountants and basing his denial upon that ground denies that the objec-

tors and exceptors are further credibly informed and/or believe, that Receiver Gotthold has never authorized or approved the expenditure or the payment of the item "Dec. 31, (1926) Phillip A. Hershey & Co., Accountant fees, $5,900.", which appears at Line 14 at Page 599 of the final account, and in this connection the said Receiver avers that Mr. Gothold has never in any of his telegraphic or letter correspondence with Mr. Lieurance objected to said item or stated anything even tending to imply a repudiation of the responsibility therefor. The correspondence passing between Mr. Gotthold and Mr. Lieurance bearing upon this subject is as follows:

Letter of February 21, 1927, from Mr. Gotthold to Mr. Lieurance:

> "Please let me know the amount paid or agreed to be paid to accountants."

Mr. Lieurance on March 1st, 1927, replied:

> "For the services of the accountants here throughout the term of the Receivership from the time of its inception to date we have paid approximately $8,000."

In letter from Mr. Gotthold, dated March 4, 1927, addressed to Mr. Lieurance, he acknowledges receipt of the letter of Mr. Lieurance dated March 1st, but makes no reference to the [112] amount already paid to accountants.

Since the letter of March 4th, 1927, there has been no further word from Mr. Gotthold concerning this item. And in this connection Receiver Lieurance avers that at no time has Mr. Gotthold made any

comment upon or exception to the said item of $5,900.

ANSWERING PARAGRAPH C ON PAGE 3 OF THE WRITTEN OBJECTIONS AND EXCEPTIONS.

The said Receiver A. F. Lieurance has no knowledge upon the subject of the information or belief of the objectors that Receiver Gotthold never has concurred and does not now concur in the statements set forth in said purported joint report explaining the manner in which Receiver Lieurance and Attorney Eliassen procured interim allowances, the nature of the objections thereto interposed by the creditors, and the circumstances concerning the reduction of such allowances, but in this connection Receiver Lieurance avers that although Receiver Gotthold duly received the final account and report and petition and notice of hearing on June 1, 1927, he has not since said time, nor at any time, nor at all, even intimated to Receiver Lieurance that he does not concur in the said report or that he does not now concur in the purported joint recommendation of the allowance of further fees and compensation in favor of Receiver Lieurance and Attorney Eliassen. And the said Receiver A. F. Lieurance further avers that Mr. Gotthold has never implied to Mr. Lieurance at any time, his repudiation of the statements mentioned or the explanations and recommendations, or that he has objected or excepted thereto. But in this connection Receiver Lieurance reiterates the allegation that the so-called

"objections and exceptions" were filed in the above-entitled proceeding without submission to Receiver Gotthold. [113]

ANSWERING "2. SPECIFIC OBJECTIONS AND EXCEPTIONS TO FINAL ACCOUNT" FOUND ON PAGE 3.

The said Receiver A. F. Lieurance denies that all of the services performed by Phillip A. Hershey & Company in the premises were rendered under a contract between Receiver Lieurance and Phillip A. Hershey & Company by the terms of which the compensation for such services should be the sum of $300 per month and/or no more; or that there was any contract at any time during the administration of this estate between Receiver Lieurance and Phillip A. Hershey & Company concerning the amount to be paid to the accountants. In this connection Receiver A. F. Lieurance avers that Phillip A. Hershey & Company were given a temporary drawing account on account of fees of $300 per month, and that during the month of December, 1926, it was deemed advisable to fix the compensation of the accountants, and that after thoroughly informing himself as to the amount and character of the work done by the said accountants and the amount of time involved in connection therewith, and after inquiry made concerning the reasonable value of such services, an agreement was reached with the said Phillip A. Hershey Company for the payment to him of the said sum of $5,900, in addition to the moneys already received aggregating $2,100,

making $8,000 in all, for all services rendered to and including October 31, 1926.

Respecting the so-called "excess payment of $50 made during the month of August, 1926"; Receiver Lieurance avers that the said Phillip A. Hershey Company drew on account of their fees the sum of only $250 for the month of June, 1926, instead of $300, and that the payment made of the $50 additional in August, 1926, was intended to cover the difference between the amount drawn and the amount to which the company was entitled on account of services for the month of June, 1926. [114]

ANSWERING PARAGRAPH B ON PAGE 4 OF THE WRITTEN OBJECTIONS AND EXCEPTIONS:

Receiver Lieurance avers that he does not know what, if any, information was given the objectors and exceptors concerning any statement made by him relative to the employment of Phillip A. Hershey & Company. But in this connection Receiver Lieurance denies that he stated to a representative of the creditors of the defendant, or to any other person, or at all, that the sole cost of the services of Phillip A. Hershey & Company would be the sum of $300 per month. Whether such purported statement as claimed was reported to the Committee of Creditors of the defendant is not within the knowledge of Receiver Lieurance nor has he any knowledge or information as to the statement "that in reliance thereupon the employment of Phillip A. Hershey & Company upon such terms was tacitly, or (other-

wise), acquiesced in." If such report was made to any Creditors' Committee, or to anyone, it was made upon some unauthorized statement and without the knowledge or consent or approval of Receiver Lieurance.

In this connection Receiver Lieurance avers that he has in his possession copies of the minutes of the meeting of the Creditors' Committee held in New York, on the following dates:

May 28, 1926
May 29, 1926
June 9, 1926
July 23, 1926
Sept. 8, 1926
Oct. 11, 1926
Dec. 3, 1926,

and that no mention is made in any of these minutes of any such report, or of any such nature as the employment of Phillip A. Hershey & Company as accountants for the Western Receivers.

ANSWERING PARAGRAPH C ON PAGE 4 OF THE OBJECTIONS AND EXCEPTIONS.

Receiver Lieurance denies that the services rendered by [115] Phillip A. Hershey & Company were and are of a reasonable value not exceeding said sum of $300 per month, and/or were fully paid and/or adequately compensated for and/or paid prior to the payment of said additional sum of $5,900 on December 31, 1926. And in this connection, Receiver Lieurance avers that he has been reliably informed by auditors and accountants that

the value of the services rendered by Phillip A. Hershey & Company to the Receivers in the administration of the above-entitled estate is greatly in excess of the amount paid the said company.

ANSWERING PARAGRAPH "3. SPECIFIC OBJECTIONS AND EXCEPTIONS TO FINAL REPORT (A)":

Receiver Lieurance denies that the true facts in the premises with respect to the statement set forth in the final report concerning the circumstances under which interim or temporary allowances were heretofore made in favor of Receiver Lieurance and Attorney Eliassen are as set forth in the said objections and exceptions.

ANSWERING PARAGRAPH B ON PAGE 5 OF THE OBJECTIONS AND EXCEPTIONS.

Receiver Lieurance reiterates the fact that "ever since his appointment as Receiver herein he has neglected his own affairs and devoted his time and effort to the administration of the affairs of this estate." Receiver Lieurance reaffirms said statement and denies that such statement is untrue.

ANSWERING PARAGRAPH 2 ON PAGE 5 OF OBJECTIONS AND EXCEPTIONS.

Receiver Lieurance reiterates his allegations contained in the final report and avers that the facts concerning the allowances are as stated therein, and not as stated therein, and as stated in the objections and exceptions. [116]

ANSWERING PARAGRAPH A OF OBJECTIONS AND EXCEPTIONS CONTAINED ON PAGES 6 AND 7;

Receiver Lieurance avers that he never saw the telegram of December 9, 1926, alleged to have been received by certain representatives of the Western Creditors concerning prospective allowances and he cannot therefore either affirm or deny the said representations.

ANSWERING PARAGRAPH B, PAGE 7 OF THE SAID OBJECTIONS AND EXCEPTIONS.

Receiver Lieurance admits that a conference was held on December 9, 1926, at the office of Attorney Joseph Kirk of the San Francisco Board of Trade, at which Mr. Walton N. Moore was present the greater part of the time. It was the understanding of the meeting as suggested that the allowances asked for in the New York jursdiction by Receiver Gotthold and his attorneys, McManus, Ernst & Ernst, Esqs., were excessive. It was not, however, the agreement or understanding that the views of the members of the Western Creditors Committee should be ascertained and presented to the several courts respectively before any action should be taken concerning the allowances to either Receiver Lieurance or his attorney Edward R. Eliassen, Esq. In this connection, Receiver Lieurance avers that the understanding and agreement was that as most of the work in the administration of the estate was done here in the western jurisdictions where all of

the stores of the defendant company were located, and where almost the entire business of the administration was carried on, that the matter of the allowances to the New York Receiver and his attorneys should be deferred until after it could be ascertained what allowances the Courts would make here in the western jurisdictions; it having been expressly and definitely stated by both Receiver Lieurance and his attorney, Edward R. Eliassen, [117] that they desired to have the question of the allowances to them left to the discretion of the Courts in the various western jurisdictions. This fact was well known, not only to attorney Kirk, and Mr. Moore, but also to Receiver Gotthold, and other interested parties. In this connection a telegram from Messrs. McManus, Ernst & Ernst to Mr. Lieurance, dated December 6, 1926, stated:

> "We are applying today for order declaring dividend forty per cent and also for allowances on account to Receivers and ourselves stop This is without prejudice to and cannot jeopardize your application in West for allowances to ancillary Receivers and Eliassen."

Telegram from McManus, Ernst & Ernst to Receiver Lieurance, dated December 7, 1926, states:

> "* * * At request Creditors Committee no allowances were fixed for Receivers or counsel until receiving some indication from you what aggregate amount you and Eliassen will request from Western jurisdictions Stop Will you please wire us approximately what aggregate allowances will be so requested."

Reply telegram of Receiver Lieurance to McManus, Ernst & Ernst, dated December 8, 1926, reads as follows:

> "Replying your telegram December seventh no amount on account for attorneys and Receivers in ancillary jurisdiction will be suggested by us Stop However will ask for allowances on account but amounts will be left entirely to discretion of courts Stop Feel this best and most fair method to pursue Stop Have not slightest idea of what Courts will do but feel they will be fair to both creditors and ourselves."

Telegram from Mr. A. V. Love of Seattle, Washington, to Receiver Lieurance, dated December 8, 1926, reads:

> "William Frazer Chairman Creditors Committee wants my views by wire on full and final compensation for Ernst Gotthold Eliasson and yourself Stop Judge Hand has asked for our views and suggestions please wire me amounts you and Mr. Eliasson expect." [118]

A reply to this telegram was made by long distance telephone, in which Mr. Lieurance told Mr. Love that he did not want to suggest any amount of fees but wanted to leave the matter of the fixation of allowances on account entirely to the discretion of the Courts in the various jurisdictions.

On December 8, 1926, Mr. Gotthold wired Mr. Lieurance as follows:

"I shall be glad to know your view as to allowances to Receivers and counsel as soon as possible."

On December 10, 1926, Receiver Lieurance replied to Mr. Gotthold's wire of December 8th, as follows:

"I purposely delayed replying to your telegram of December ninth requesting aggregate amount fees to be allowed attorneys and Receivers pending result of meeting with San Francisco Board of Trade and Walton Moore held late yesterday afternoon in San Francisco Stop As previously stated Eliassen and myself feel in fairness to creditors attorneys and receivers matter of compensation should be left entirely to Courts without suggestion or recommendation on our part as to amounts Stop This plan will be followed in Ancillary jurisdictions and is supported by Walton Moore, A. V. Love and San Francisco Board Trade Stop Their views and recommendations in this regard were communicated to Mr. Fraser yesterday by wire in reply to his request to them for same as Judge Hand had evidently asked creditors committee for recommendations as to aggregate allowances to be made attorneys and receivers Stop In view of fact that fixation of fees and compensation will be left to courts in western jurisdictions it is impossible for me to even guess at amounts which will be allowed Stop It has been suggested here and evidently at New York also

that you receive your compensation in parent jurisdiction and I look to Courts in Ancillary jurisdictions for my compensation Stop There is no doubt this will simplify matters and keep aggregate amount to be allowed down to reasonable figure as was suggested at yesterdays meeting however no one can foretell how this will work out Please let me have your views regarding this arrangement Stop Application for orders to pay forty per cent dividend and allowances on account will be made in Northwest next week." [119]

Letter received from Receiver Gotthold, dated December 9, 1926, addressed to Receiver Lieurance acknowledging receipt of the telegram of December 8th, and stating:

"I have no doubt that the Courts will act fairly in the matter."

On December 9, 1926, Mr. A. V. Love, of Seattle, a member of the Creditors' Committee sent a wire to Mr. William Fraser, Chairman of the New York Committee, as follows:

"Talked to Lieurance long distance today. He will not suggest amount of fees says will be satisfied with courts order. Think Lieurance compensation should be greater than Gottholds as he has done most of work. Think Ernst suggested fees altogether unreasonable and that all parties should be satisfied with reasonable fees."

On December 9, 1926, Mr. Walton N. Moore sent a telegram to Mr. William Fraser, Chairman of

the Creditors' Committee, a copy of which was sent to Receiver Lieurance, and which reads as follows:

> "Further answering your telegram Receiver Lieurance and attorney intend having each Ancillary Western Court also order dividend forty per cent Stop To avoid possible conflict between Eastern and Western Courts as to amounts of allowances to Receivers and their attorneys as Chairman of Creditors Committee here and member of New York Committee I earnestly request that question of such allowances be deferred for time being until Receivers and attorneys and Committees can exchange views and come to some agreement concerning gross amounts to be asked for Stop Amounts of allowances to Receivers and attorneys at this time by Judge Hand may prove unsatisfactory to ancillary courts who may order different amounts resulting in confusion Stop As you now know from yesterdays telegrams from Lieurance to Gotthold and Attorneys McManus and Ernst Receiver Lieurance and Attorneys in Ancillary jurisdictions intend leaving amounts of allowances to discretion of Ancillary Courts."

Telegram from Mr. Gotthold to Mr. Lieurance, dated December 9, 1926, reads as follows: [120]

> "Suggested interim allowances in New York are ten thousand to Receivers to be divided equally ten thousand to New York counsel Stop New York counsel to make no applica-

tion in Ancillary jurisdictions Stop Figures indicated are satisfactory to Court and generally to creditors but before payment is made we hoped to get some estimate of total allowance so that figure might be kept down to reasonable amount."

A telegram from Receiver Lieurance to Mr. Gotthold, dated December 10, 1926, as hereinabove set out *in toto,* is hereby referred to; the same containing the answer to Mr. Gotthold's wire of December 9, 1926.

ANSWERING PARAGRAPH LETTERED "B" ON PAGE 7 OF OBJECTIONS AND EXCEPTIONS.

Receiver Lieurance with Mr. Eliassen met Attorney Joseph Kirk at his office in San Francisco, with Mr. Walton N. Moore, on the 9th day of December, 1926, at the solicitation of Attorney Joseph Kirk. That at the meeting it was suggested that the allowances asked by Receiver Gotthold and his Attorneys, McManus, Ernst & Ernst was excessive, in view of the fact, that practically all of the business of the administration was being done here in the western jurisdictions under the direction of Receiver Lieurance and Edward R. Eliassen, his attorney, and that the matter of the application at New York for the compensation of the New York Attorneys and Receiver Gotthold should be postponed until after it was determined how much the allowances to Mr. Lieurance and his attorney were to be. Mr. Lieurance and Mr. Eliassen stated that they did not want to name any fees, but that they

desired in fairness to all concerned to have the amount of the allowances on account fixed and determined by the various Courts in the ancillary jurisdictions. Mr. Moore and Mr. Kirk both expressed themselves as being of the opinion that it was fair and equitable, and both Mr. Lieurance and Mr. Eliassen understood at that time, and have [121] understood at all times since, that the plan to follow in the matter was to have the application at New York postponed until it could be learned by our applying to the ancillary Courts in the West what the aggregate allowances to Mr. Lieurance and Mr. Eliassen would be. In other words, it was thought that the amounts allowed here in the Western jurisdiction could equitably be taken as a basis for the amounts to be allowed the Receiver and his New York Attorneys at New York City, where only a small part of the work connected with the work of the administration of the affairs of the defendant Company had been done. Receiver Lieurance in this connection avers that it is not true that the purpose in asking for a continuance of the application matter at New York was to get an agreement concerning the aggregate of the amounts to be allowed the Receivers and their respective attorneys in all jurisdictions. The telegram referred to in Paragraph "B" on page 7 was drafted by Attorney Kirk in his office, in the presence of Mr. Moore, Mr. Eliassen and Mr. Lieurance and was sent in the name of Walton N. Moore to William Fraser, Chairman of the Creditors' Committee at New York under date of December 9, 1926.

This telegram as has already been shown hereinabove, in which Mr. Moore wired as follows:

> "Further answering your telegram Receiver Lieurance and Attorney intend having each ancillary Western Court also order dividend forty per cent. Stop To avoid possible conflict between Eastern and Western Courts as to amounts of the allowances to Receivers and their attorneys as Chairman of Creditors Committee here and member of New York Committee I earnestly request that question of such allowances be deferred for the time being until Receivers and attorneys and committees can exchange views and come to some agreement concerning gross amounts to be asked for. Stop Amounts of allowances to Receivers and attorneys at this time by Judge Hand may prove unsatisfactory to ancillary Courts who may order different amounts resulting [122] in confusion. Stop As you now know from yesterdays telegrams from Lieurance to Gotthold and attorneys McManus Ernst & Ernst Receiver Lieurance and attorneys in ancillary jurisdiction intend leaving amounts of allowances to discretion of ancillary courts."

Referring to the objections and exceptions to the final account of the Receivers, it will be noted that the above telegram is quoted, but that the greater portion of the same is omitted.

Receiver Lieurance further avers that it was the understanding reached at the meeting held at Attorney Joseph Kirk's office in the Board of Trade

Building, San Francisco, on December 9, 1926, that the allowance to be asked for by himself and Attorney Eliassen in the ancillary jurisdictions were to be made forthwith and as shown by Mr. Walton N. Moore's telegram to Mr. Fraser, under date December 9th, that only the allowances to be made to Receiver Gotthold and attorneys McManus, Ernst & Ernst in the jurisdiction of New York, were to be deferred and that such allowances were to be deferred only until after it was definitely known what amounts the Courts in the ancillary jurisdictions would award to Receiver Lieurance and Attorney Edward R. Eliassen. Receiver Lieurance further avers that it was understood that when the Courts had fixed the allowances of himself and Attorney Eliassen, that he would immediately communicate the results to Mr. Moore. The allowances made to Receiver Lieurance and his attorney, Mr. Eliassen, were made in the following order: First, San Francisco; then at Spokane, Washington; then at Seattle, Washington; and last at Portland, Oregon. Immediately following the hearing at Portland, Oregon, Receiver Lieurance, in compliance with his promise, immediately sent a telegram from Portland to Mr. Walton N. Moore at San Francisco, reading as follows: [123]

> "Work completed here this morning Stop Order obtained all jurisdictions pay forty per cent dividends Stop Allowance to attorney California ten thousand Spokane twenty five hundred Seattle five thousand Portland ten thousand total twenty seven thousand five hun-

> dred Stop Allowance to receivers California ten thousand divided seventy five and twenty five percent Spokane five thousand division to be made at final hearing Seattle thirteen thousand divided twelve and one Portland fourteen thousand five hundred divided thirteen five and one total forty two thousand five hundred Stop Phoned above information to Mr Love this morning Will be home Saturday."

And immediately thereafter telephoned the information contained in the above telegram to Mr. A. V. Love of Seattle, Washington. [123½]

That it was well known to Walton N. Moore and Attorney Joseph Kirk that the matter of the fixation of the allowances on account to Mr. Lieurance and his attorney were to be determined and fixed by the courts in the ancillary jurisdictions is evident from the foregoing telegraphic correspondence and also from a telegram sent by Attorney Joseph Kirk from San Francisco to Mr. Lieurance and Mr. Eliassen addressed to them at Seattle on December 15, 1926, in which Mr. Kirk wired as follows:

> "In view of the communication received by Walton N. Moore from Frazer Chairman New York Creditors Committee it is highly desirable that you should not apply for Receivers allowances of Attorneys fees in Western jurisdictions until whole subject matter can be again discussed here upon your return."

Receiver Lieurance avers further that before the meeting at Mr. Kirk's office was concluded Mr. Moore left; that Mr. Eliassen then took up with Mr. Kirk the matter of the proposed stipulation for an order of the United States District Court at San Francisco concerning the filing of creditors, claims in New York. At that time Mr. Eliassen signed the stipulation; told Mr. Kirk that the proposed order was satisfactory as drawn. As we were about to leave Mr. Eliassen told Mr. Kirk, that if agreeable to him, he would present the matter of the application for an order authorizing the dividend and fixing the allowances in San Francisco on the following morning and proceed immediately thereafter to do likewise in the various northern jurisdictions and that Mr. Kirk in reply stated in substance "That's good. And the application so far as the allowances on account of fees are concerned will be for whatever to the Court may seem fair and equitable." And that Mr. [124] Eliassen thereupon said in substance that inasmuch as he would then go out to court in the matter of this application the following morning he would be glad to take a stipulation signed by him and the draft of the proposed order to be based thereon and have it signed. And that in reply Mr. Kirk in substance said, "Very well, that is fine. I will be grateful to you," or words to that effect. This offer on Mr. Eliassen's part to take the stipulation and order with him came after Mr. Eliassen had asked Mr. Kirk if he wanted to be on hand in the morning at the time of the making

of the application and after Mr. Kirk had said, "No, I don't think that is necessary."

ANSWERING PARAGRAPH LETTERED "C" ON PAGE 8 OF OBJECTIONS AND EXCEPTIONS.

Receiver Lieurance denies that in violation of the arrangement and agreement entered into at the conference of December 9, 1926, in said objections and exceptions mentioned, and without notice to, knowledge by, or consent of any of the creditors of the defendant, or any of their representatives respectively, on December 10, 1926, Receiver Lieurance and Attorney Eliassen obtained the allowances mentioned. And denies that immediately thereafter and at divers times until and on December 16, 1926, and under the same general circumstances and conditions, obtained similar allowances in the other western jurisdictions. But in this connection Receiver Lieurance avers that Attorney Joseph Kirk, the legal representative of Walton N. Moore, and representing the objectors, knew on December 9th that Receiver Lieurance and his attorney would apply on December 10th for the order obtained and thereafter without delay they did make similar applications in the other ancillary jurisdictions; that Receiver Gotthold also had such notice; that McManus, Ernst & Ernst, Esqs., of New York, representing the eastern Creditors' Committee and also the [125] Receivers in the jurisdiction of New York, had knowledge of the fact that such application would be made. This

knowledge is largely evidenced by the telegrams mentioned hereinabove.

ANSWERING PARAGRAPH "D" ON PAGE 8 OF OBJECTIONS AND EXCEPTIONS.

Receiver Lieurance having no information or belief upon the subject sufficient to enable him to answer all of said paragraph and basing his denial upon that ground denies that immediately after information was received by representatives of the western committee concerning the allowances, the New York committee for the eastern creditors and/or all of the creditors and/or all of the several committees and/or representatives thereof, so far as known to the objectors and exceptors, vigorously, or in any other manner, or at all, protested against each and/or all of such allowances, not only upon the ground that the same were obtained without notice to any of the creditors but also upon the ground that they were obtained as alleged in flagrant or other violation of the understanding and agreement in said objections mentioned and/or upon the further ground that said allowances were grossly or at all excessive and/or Receiver Gotthold joined in such protest and/or the ground.

ANSWERING PARAGRAPH LETTERED "G" ON PAGE 9 OF OBJECTIONS AND EXCEPTIONS.

Receiver Lieurance denies that the petition presented to the Judge of the above-named court on behalf of the Walton N. Moore Dry Goods Company, accurately sets forth the facts.

ANSWERING PARAGRAPH LETTERED "H" ON PAGE 10 OF OBJECTIONS AND EXCEPTIONS.

Receiver Lieurance is informed by Mr. Eliassen that on the said 29th day of December, 1926, Mr. Eliassen at the request of the objectors' attorney, went to his office in San Francisco and had a conference with him and that he then and thereupon agreed to [126] a reduction in the amount of his allowances on account to the sum of $15,000.00, upon the understanding and agreement that the said sum of $15,000.00 was to be considered as a minimum allowance on account and that the final fee or fees should be made and determined by the Courts in the ancillary jurisdictions. Thereafter Mr. Lieurance entered into a similar agreement with his said attorney and after negotiations as to the form of stipulation and after it was suggested that the form had met with the approval of Attorney Kirk and his client, Mr. Walton N. Moore, Mr. Lieurance and Mr. Eliassen signed stipulations and that the stipulations were then signed by and on behalf of Attorneys B. D. Townsend and Francis J. Heney and sent with those signatures to the office of Joseph Kirk for his signature and the signature of Walton N. Moore. It was promised that the instruments bearing the signatures of Mr. Moore and Mr. Kirk would be in the hands of Mr. Eliassen, representing Receiver Lieurance, that same day. However, so Receiver Lieurance is informed and believes, although Mr. Kirk did sign the stipulation, Mr. Moore several days later refused to append his

signature thereto, stating that the form was not satisfactory to him. And because of his insistence upon a radical change in the form of the stipulation already signed by all of the other parties, the final form of stipulation, after many conferences, was not agreed upon nor signed until sometime on or about the 15th of April, 1927.

ANSWERING PARAGRAPH LETTERED "I" ON PAGE 10 OF OBJECTIONS AND EXCEPTIONS.

Receiver Lieurance denies that the reduction of such allowances in this or in any other jurisdictions was agreed to by Receiver Lieurance and/or Attorney Eliassen under the compulsion of the matters and/or facts set forth in the petition of Walton N. Moore, mentioned in said objections and exceptions and/or [127] that it was not agreed to by them voluntarily, "in the interests of harmony," except as alleged in the sense that Receiver Lieurance and/or Attorney Eliassen desired to placate the objecting and protesting creditors and/or avoid giving them any further offense throuh a litigation of the issues tendered by the petition of Walton N. Moore. Further answering said Paragraph "I" Receiver Lieurance admits that it was stipulated that while Receiver Lieurance and Attorney Eliassen should have the right to make application for further allowances on account of fees and compensation and that any creditor or creditors shall have the right to oppose or contest any applications for fees, but denies that both Receiver Lieurance and

Attorney Eliassen, or either of them, knew that it was the intention of the eastern creditors to interpose objections and/or exceptions to the making of any further allowance in favor of either Receiver Lieurance or Attorney Eliassen. In this connection Receiver Lieurance alleges on information and belief that the eastern Creditors' Committee had expressed itself as being willing to pay to him $22,500.00; that is to say $7,500.00 more than the allowance provided for in the stipulation.

ANSWERING PARAGRAPH LETTERED "J" ON PAGE 11 OF OBJECTIONS AND EXCEPTIONS.

Denies that virtually all of the time involved in the negotiations which resulted in the stipulations hereinbefore mentioned was consumed by the discussions of the historical matters to be inserted in such stipulations by way of preamble. In this connection Receiver Lieurance alleges that there was little time expended in the negotiations of the formation of the stipulations which was said to be satisfactorily formed by Attorney Joseph Kirk and his client, Walton N. Moore, and which were signed by and on behalf of Receiver Lieurance, Attorney Eliassen, Attorney [128] Francis J. Heney and Attorney B. D. Townsend. It was only after the surprise of the positive refusal on the part of Mr. Moore to sign these stipulations in the form which Mr. Lieurance and his Attorney were informed was agreeable to Mr. Moore. That numerous and lengthy discussions took place concerning a form

which would be satisfactory to Mr. Moore. Receiver Lieurance further alleges that despite the fact that because of the arbitrary refusal of Mr. Moore certain recitals were eliminated. The allegations made by Receiver Lieurance in the final report of the Receivers are accurate and correct. And Receiver Lieurance hereby denies that by their final report the Receivers in substance, present the same matters to the Court, which do not accurately state or represent the true facts in the premises.

ANSWERING PARAGRAPH LETTERED "K" ON PAGE 11 OF OBJECTIONS AND EXCEPTIONS.

Receiver Lieurance hereby refers to all of the allegations and denials in his answer and requests that the same be considered in answer to the copy of the petition of Walton N. Moore, marked Exhibit "A," and requests that the denials and allegations in this answer contained be considered with the same force and effect as if set out particularly and at length.

ANSWERING SUBJECT NUMBERED "2" LETTERED "B" ON PAGE 12 OF THE OBJECTIONS AND EXCEPTIONS.

Receiver Lieurance denies that he knew of the primary objects of the institution of receivership proceedings instead of liquidating the affairs of the company in bankruptcy proceedings, or that the receivership proceedings should have continued only sixty days, or that in the event of the inability and

failure of the defendant company to refinance and reorganize its affairs to liquidate the defendant company by means and methods which would reduce the expenses of liquidation which would normally be incurred if effected in the bankruptcy proceedings. And in this [129] connection, Receiver Lieurance denies that all of the same was well known and agreed to by all of the parties, including Receiver Lieurance. Receiver Lieurance also avers that he did not know or that had he been selected and recommended solely by R. A. Pilcher. His information is that he was the selection of all the creditors present at the first meeting of the creditors in New York and that he was strongly urged by Mr. Walton N. Moore to accept the appointment as Receiver.

ANSWERING PARAGRAPH LETTERED "C" ON PAGE 13 OF OBJECTIONS AND EXCEPTIONS.

Receiver Lieurance having no information or belief upon the subject to enable him to answer this paragraph and basing his denial upon that ground denies that the maximum normal fees and/or compensation which would be allowed a trustee or a receiver in bankruptcy, if the affairs of the defendant company had been liquidated in bankruptcy proceedings, would be less than the sum of $10,000.00, covering all jurisdictions.

ANSWERING PARAGRAPH LETTERED "D" ON PAGE 13 OF OBJECTIONS AND EXCEPTIONS.

Denies that the services rendered and performed

by Receiver Lieurance were and are of a reasonable value less than the sum of $10,000.00, covering all jurisdictions. But avers on the contrary, that his services rendered and the results obtained in all of the jurisdictions of the Courts in the western jurisdictions, are of the reasonable value of at least $40,000.00, only $15,000.00 of which has already been paid. By arrangement and understanding Mr. Lieurance has waived any fees to which he might be entitled to in the eastern jurisdictions.

ANSWERING PARAGRAPH LETTERED "E" ON PAGE 13 OF OBJECTIONS AND EXCEPTIONS. [130]

Denies that the reasonable value of the services rendered by him in the Northern District of California was or is the sum of $3,500.00, and having no information or belief upon the subject of the maximum fee in the matter of bankruptcy and basing his denial upon that ground denies that the maximum fee and compensation which would be allowed a trustee or a Receiver in bankruptcy for similar services would be considerably less than such sum of $3,500.00.

ANSWERING PARAGRAPH LETTERED "F" ON PAGE 13 OF OBJECTIONS AND EXCEPTIONS.

Receiver Lieurance reiterates the facts set out in his report and particularly that statement that ever since his appointment as Receiver herein, he has neglected his own affairs and has devoted his time and efforts to the affairs of this estate. And

he denies that he is virtually retired from active business and that he was and is living virtually a life of leisure, which was not materially interrupted by his duties as a Receiver. He denies that R. A. Pilcher was employed by him, but averse that R. A. Pilcher was employed by the New York Creditors' Committee as shown by the minutes of a meeting held by the said Committee at New York on the 9th of June, 1926, which said minutes concerning the said employment read as follows: "The question of compensation to Mr. Pilcher was also discussed and it was resolved that for the present his salary at the rate of $10,000.00 per annum from the date of Receivership should be continued until such time as it is terminated by the Receiver." Receiver Lieurance did not learn of Mr. Pilcher's employment until sometime afterwards when Mr. Pilcher came to California and asked for his salary. Thereupon Receiver Lieurance telegraphed to Receiver Gotthold in New York asking concerning said alleged employment, requesting his views as to whether or not the request of Mr. Pilcher for $750.00 [131] to cover his claim for salary for the month of June, 1926, should be paid. Instructions were thereupon given Mr. Lieurance to make such payment, which was the only payment made by him, which payment together with one more payment was the only money paid in the receivership proceedings by Mr. Lieurance as Receiver to Mr. Pilcher. Mr. Lieurance objected to any further employment and any further payment to Mr. Pilcher for the reason that Mr. Pilcher rendered

no services whatsoever to or for Mr. Lieurance in the administration of the R. A. Pilcher Company.

ANSWERING PARAGRAPH LETTERED "G" ON PAGE 14 OF THE OBJECTIONS AND EXCEPTIONS.

Receiver Lieurance avers that Mr. Pilcher did not arrive at the office of the Receiver Lieurance until the lapse of a period of some four or five weeks from the time of the commencement of said Receivership and that it is not true that a considerable portion of the conferences or that any portion of the conferences between Receiver Lieurance and Mr. Pilcher during the sixty-day period or in the month of August, 1926, were devoted to efforts by Mr. Pilcher to induce Receiver Lieurance to aid him in refinancing and/or reorganizing the defendant company. Mr. Pilcher arrived on June 26, 1926 and left on July 3, 1926, and at no time did he mention the subject of personally aiding the refinancing or reorganizing of his business.

ANSWERING PARAGRAPH LETTERED "H" ON PAGE 14 OF SAID OBJECTIONS AND EXCEPTIONS.

Denies that the western stores were operated only for a period of a few weeks until the several western stores could be advertised for sale, and bids received and the highest bidders respectfully determined, but in this connection Receiver Lieurance avers that all of the stores were maintained and conducted and the business operated as going con-

cerns and that for a period of upwards of five months during which time sales were made over the [132] counter aggregating $499,263.28 and that during the period of operation as aforesaid it became necessary to purchase merchandise in the open market to the extent of approximately $100,000. Following this the sixteen stores of the defendant company were sold for an aggregate of $257,600.00, as confirmed by the Courts. In this connection it is denied that the work of Receiver Lieurance in the administration of this estate was all completed before October 31, 1926, or that since said date virtually no duties have devolved upon Receiver Lieurance in the premises as stated in said paragraph. But in this connection Receiver Lieurance avers that since the 31st day of October, 1926, until the early part of the year of 1927 there was hardly a day which he could call his own as his time was practically all taken up in the matter of the administration of this estate and that since the early part of this year up to the present time he has devoted a large portion of his time to the affairs of this administration and has been unable to make any definite personal plans because of the constant interference of this business.

ANSWERING PARAGRAPH LETTERED "I" ON PAGE 15 OF OBJECTIONS AND EXCEPTIONS.

Admits that in the administration Receiver Lieurance provided himself with all the assistance and facilities required in connection therewith, but

that such assistance did not minimize the amount of his personal labors rendered by him in and about the administration, nor did it take from his shoulders any of the responsibilities, nor did they aid him in the matter of the executive duties devolved upon him in this matter. Mr. Lieurance has no knowledge of the fact that members of the Creditors' Committee rendered him important and valuable assistance and particularly in the matter of formulating the policies and general methods to be pursued, thus carrying out, as claimed, the primary object [133] of reducing the expenses which would have been incurred by a liquidation of the affairs of the defendant company in the bankruptcy proceedings. Receiver Lieurance avers in connection with the foregoing that the assistance and facilities with which he provided himself involved the small amount of assistance consistent with the magnitude of the business and the economical administration thereof. Receiver Lieurance further avers that in order to keep down the expense he has maintained one office in cramped quarters, such office being equipped with only the bare necessities.

ANSWERING PARAGRAPH NUMBERED "3" AS TO ATTORNEY ELIASSEN PARAGRAPH LETTERED "B" ON PAGE 15 OF THE OBJECTIONS AND EXCEPTIONS.

Denies that the institution of such ancillary proceedings did not involve any original labor or research on the part of Attorney Eliassen, or that the

complaints or petitions in such ancillary proceedings were exact copies of the original complaint or petition prepared and/or filed by the eastern attorneys for the Receivers in the original or parent proceedings instituted in the United States District Court for the Southern District of New York, with the addition of appropriate allegations setting forth the facts concerning the appointment of the Receivers in the eastern jurisdictions with permission to institute ancillary proceedings in the western jurisdictions.

ANSWERING PARAGRAPH LETTERED "C" ON PAGE 16 OF THE OBJECTIONS AND EXCEPTIONS.

Denies that virtually all of the legal services required in the ancillary proceedings in the western jurisdictions which were performed by Attorney Eliassen were of a formal nature, or that there were a few collateral or contested matters of minor importance, or that these matters did not involve complicated issues, or required services extending over any considerable [134] length of time, or that they did not involve any considerable portion of the estate, relatively, or otherwise speaking. And Receiver Lieurance upon the information furnished by Mr. Eliassen and upon his information and belief denies that a large part, or a considerable amount of the labor performed by him, consisted of clerical or accounting services, which required only the supervision of Attorney Eliassen and/or were

performed by others employed therefor at the expense of the estate.

ANSWERING PARAGRAPH LETTERED "D" ON PAGE 16 OF THE OBJECTIONS AND EXCEPTIONS.

Receiver Lieurance denies that the actual reasonable value of the services performed by Attorney Eliassen in all of the western jurisdictions, including the Northern District of California is less than the sum of $15,000.00 and/or that the actual reasonable value of all the services rendered by Attorney Eliassen in the above-entitled proceeding in the Northern District of California is considerably less than the sum of $5,000.00, and in this connection Receiver Lieurance avers that in his opinion the services rendered by Attorney Eliassen in all of the four western jurisdictions are of a reasonable value greatly in excess of $15,000.00 and that the services performed by him in the Northern District of California are of a value considerably in excess of $5,500.00. In the opinion of Mr. Lieurance, the entire services of Attorney Eliassen in all of the jurisdictions are of the reasonable value of $30,000.

ANSWERING PARAGRAPH LETTERED "B" OF EXCEPTIONS NUMBERED III ON PAGE 17 OF OBJECTIONS.

Receiver Lieurance having no information or belief upon the subject sufficient to enable him to answer all of this paragraph and basing his denial upon that ground denies that the objectors and ex-

ceptors are credibly informed and/or believe that the New York Committee of the eastern creditors and/or Receiver Gotthold concur in the objections and exceptions and/or [135] the grounds in support thereof as mentioned in said paragraph and/or desire to participate in the hearing of such objections and exceptions. In this connecton, however, Receiver Lieurance is in receipt of and has in his possession a telegram sent by Arthur F. Gotthold, Co-receiver, under date of July 7, 1927, stating that these objections and exceptions were filed before submitting them to him. In this connection Receiver Lieurance further avers that on July 6, 1927, he received a telegram from Mr. Gotthold in which he states that he has just received a copy of the objections and exceptions to Receivers' Final Report with Mr. Kirk's letter explaining proceedings. The objections and exceptions were filed with the Clerk of the United States District Court on June 27, 1927, eleven days before Mr. Gotthold received a copy of such objections and exceptions or explanation from Attorney Joseph Kirk concerning the same.

ANSWERING PARAGRAPH LETTERED "C" ON PAGE 17 OF THE OBJECTIONS AND EXCEPTIONS.

Receiver Lieurance avers that he has always been and is now in favor of economy in the administration of this estate and that he is neither in favor of or opposed to the plan as outlined, but is absolutely neutral and is disposed to comply in every way with

the wishes of the Courts in this regard. In this connection Mr. Lieurance, however, states that he is earnestly desirous of having the administration brought to as speedy a close as possible and that any equitably plan which meets with the approval of the Court, that will expedite the closing of the estate will have his hearty support.

A. F. LIEURANCE. [136]

State of California,
County of Alameda,—ss.

A. F. Lieurance, being first duly sworn, deposes and says: That he is one of the Receivers of the R. A. Pilcher Co., Inc., that he has read and signed the foregoing answer to the objections and exceptions to final account and report heretofore filed and knows the contents thereof; that the same is true of his own knowledge except as to the matters which are therein stated on his information and belief and as to those matters that he believes it to be true.

A. F. LIEURANCE.

Subscribed and sworn to before me this 21st day of September, 1927.

[Seal] EDWARD R. ELIASSEN,
Notary Public in and for the County of Alameda, State of California.

[Endorsed]: Filed Oct. 10, 1927. [137]

[Title of Court and Cause—Cause Equity—No. E.-8846.]

ORDER OF OREGON DISTRICT JUDGE RE APPROVAL OF RECEIVER'S REPORT.

On reading the stipulation of A. F. Lieurance, one of the Receivers on the above-named defendant on the one part and Walton H. Moore Dry Goods Company and others, objectors and exceptors to the final account of said Receiver and the allowance thereof and to the allowance of any further compensation to the said Receiver and his attorney, it is by the Court

ORDERED, ADJUDGED and DECREED that the District Court of the United States for the Northern District of California may pass upon the said objections and exceptions and fix the compensation to said Receiver and his attorney as to the services rendered in this jurisdiction and that when the said order shall be made by the said District Court of the United States for the Northern District of California and shall have become final and shall have been complied with by the said Receiver and his attorneys, that upon prduction of a certified copy thereof, an order may be entered herein discharging said Receiver and exonerating his bond.

Done in open court this 27th day of July, 1927.

R. S. BEAN,
Judge.

[Endorsed]: Filed July 27, 1927.

The foregoing is a true copy of order entered and filed in the above-entitled cause.

Witness my hand and the seal of said court this 27th day of July, 1927.

[Seal] G. H. MARSH,
Clerk.
By F. S. Bush,
Chief Deputy.

[Endorsed]: Filed August 8, 1927. [138]

[Title of Court and Cause—Cause Equity—No. E.-540.]

ORDER OF DISTRICT JUDGE, WESTERN DISTRICT OF WASHINGTON RE APPROVAL OF RECEIVER'S REPORT.

On reading the stipulation of A. F. Lieurance, one of the Receivers of the above-named defendant on the one part and Walton N. Moore Dry Goods Company and others, objectors and exceptors to the final account of said Receiver and the allowance thereof and to the allowance of any further compensation to the said Receiver and his attorney, it is by the Court

ORDERED, ADJUDGED AND DECREED that the District Court of the United States for the Northern District of California may pass upon the said objections and exceptions and fix the compensation to said Receiver and his attorney as to the services rendered in this jurisdiction and that when the said order shall be made by the said Dis-

trict Court of the United States for the Northern District of California and shall have become final and shall have been complied with by the said Receiver and his attorney, that upon production of a certified copy thereof, an order may be entered herein discharging said Receiver and exonerating his bond. [139]

Done in open court this 1st day of August, 1927.

JEREMIAH NETERER,
Judge.

O. K.—FRANCIS J. HENEY,
B. D. TOWNSEND,
JOSEPH KERT,
Attorneys for Objectors.
By L. N. STERN,
Their Attorney.
EDWARD R. ELLIASSEN,
Atty. for Receivers.

The foregoing is a full, true and correct copy of an original order made on the 1st day of August, 1927.

Witness my hand and official seal this 1st day of August, 1927.

[Seal] ED. M. LAKIN,
Clerk.
By S. M. H. Cook,
Deputy.

[Endorsed]: Filed August 8, 1927. [140]

[Title of Court and Cause—Cause Equity—No. E.-4293.]

ORDER OF DISTRICT JUDGE, EASTERN DISTRICT OF WASHINGTON, RE APPROVAL OF RECEIVER'S REPORT.

On reading the stipulation of A. F. Lieurance, one of the Receivers of the above-named defendant on the one part and Walton N. Moore Dry Goods Company and others, objectors and exceptors to the final account of said Receiver and the allowance thereof and to the allowance of any further compensation to the said Receiver and his attorney, it is by the Court

ORDERED, ADJUDGED AND DECREED that the District Court of the United States for the Northern District of California may pass upon the said objections and exceptions and fix the compensation to said Receiver and his attorney as to the services rendered in this jurisdiction and that when the said order shall be made by the said District Court of the United States for the Northern District of California and shall have become final and shall have been complied with by the said Receiver and his attorney, that upon production of a certified copy thereof, an order may be entered herein discharging said Receiver and exonerating his bond.

Done in open court this 26th day of July, 1927.

J. STANLEY WEBSTER,
Judge. [141]

United States of America,
Eastern District of Washington,—ss.

I, Harry C. Clark, Clerk of the District Court of the United States for the Eastern District of Washington, do hereby certify that I have compared the foregoing copy with the original order *in re* discharging of Receiver, in Cause No. E.–4293, Sidney Gilson, Herman Avrutine and Samuel Avrutine, copartners engaged in business as National Garment Co., vs. R. A. Pilcher Co., Inc., in the foregoing entitled cause, now on file and of record in my office at Spokane, and that the same is a true and perfect transcript of said original and of the whole thereof.

WITNESS my hand and the seal of said court this 26th day of July, 1927.

[Seal] HARRY C. CLARK,
Clerk.
By Eva M. Hardin,
Deputy.

[Endorsed]: Filed August 8, 1928. [142]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held in the courtroom thereof, in the city and county of San Francisco, on Tuesday, the 20th day of September, in the year of our Lord one thousand nine hundred and twenty-seven. Present: The Honorable A. F. ST. SURE, District Judge.

[Title of Cause.]

MINUTES OF COURT—SEPTEMBER 20, 1927 —ORDER OF REFERENCE TO MASTER.

Upon motion on behalf of A. F. Lieurance, Receiver herein and Edward R. Eliassen, his attorney, IT IS ORDERED that the petition for settlement and approval of the final account and report of the Receiver, the petition for allowance of further fees and compensation to A. F. Lieurance, Receiver, and to Edward R. Eliassen, attorney for the Receivers, and the exceptions and objections to final account and report to the petition for fees and compensation to the Receiver and his attorney, be and the same are hereby referred to Harry M. Wright, Esq., as Special Master, to take the testimony and report his findings and conclusions thereon to this Court. FURTHER ORDERED that said matters be set for hearing before said Special Master on October 11th, 1927, subject to the convenience of said Special Master. [143]

[Title of Court and Cause.]

REPORT OF SPECIAL MASTER.

To the Honorable the Judges of the Above-entitled Court:

The report of H. M. Wright as Special Master respectfully shows as follows:

On September 20, 1927, this court made its order referring to the undersigned as Special Master the

petition for settlement and approval of the final account and report of the Receiver, the petition for allowance of further fees and compensation to A. F. Lieurance, Receiver, and to Edward R. Eliassen, his attorney, and the exceptions and objections to the final account and report and to the petition for fees and compensation to the Receiver and his attorney, with directions to take testimony and report his findings and conclusions thereon to the court, with the further order that the matter be set for hearing before the Special Master on October 11, 1927, subject to his convenience.

By a stipulation at the outset of the hearing before the Master, it was agreed that I should also return the evidence taken. Furthermore, during the course of the hearing the Receiver, Mr. Lieurance, submitted and filed a report and account supplemental [144] to the final account, and it was stipulated by counsel that this report and account should also be within the matters referred.

The hearing was accordingly set for October 11, 1927, and on that day I was attended by the Receiver, Mr. Lieurance, his attorney, Mr. Eliassen, by Peter J. Crosby, Esq., representing said Receiver and his said attorney, and by Francis J. Heney, Esq., Grant H. Wren, Esq., and C. A. Shuey, Esq., as counsel representing Walton N. Moore Dry Goods Co., and other objecting creditors.

The hearing was had on October 11, 1927, on October 19, 1927, on October 20, 1927, and on October 21, 1927. On the last-named date, on request of Mr. Heney, the matter was submitted on

briefs to be filed within the time stated in the order of submission, and after extensions of time the final brief of objecting creditors was filed with me on January 3, 1928. These briefs are returned with the report.

The testimony was taken in shorthand and transcribed by Edward W. Lehner, John Edward Boys, and Charles R. Gagan, competent and disinterested reporters appointed by the Master. The transcript, consisting of 308 pages, is returned with the report.

Joseph Kirk, Esq., one of the attorneys of record for objecting creditors, was seriously ill during the hearing and died after the conclusion of the hearing. His testimony on certain issues was stipulated into the record by counsel, and part of said testimony, contained, according to stipulation, in a letter from Mr. Wren to the Master, is annexed to the cover of the transcript.

An index of exhibits received is annexed to this report, and said exhibits are likewise separately returned.

The said transcript and the said exhibits, and the depositions of Arthur F. Gotthold and Walter E. Ernst, taken in New York, [145] constitute all the evidence upon which this report is based.

Defendant, R. A. Pilcher Co., Inc., was a corporation engaged in chain-store merchandising, with a head office in New York, but with all its sixteen stores located in California, Oregon and Washington: Three in California, six in Oregon, and seven in Washington (Tr., p. 23). During or shortly prior to the early part of June. 1926, receivership

proceedings were instituted in the United States District Court for the Southern District of New York, which thus became the court of original jurisdiction, and Arthur F. Gotthold, an attorney of New York, and A. F. Lieurance, a resident of Oakland, California, formerly in the chain-store business, were appointed temporary Receivers.

The firm of McManus, Ernst & Ernst appeared in New York as counsel for complainants and for the Receivers. Immediately on notification of his appointment, Mr. Lieurance, for himself and his co-receiver, engaged Edward R. Eliassen, an attorney of Oakland, California, as his counsel, and ancillary bills for the appointment of Receivers for defendant were filed in the Northern District of California, in the District of Oregon, and in the Eastern and Western Districts of Washington, and Mr. Lieurance and Mr. Gotthold were appointed temporary Receivers. The temporary receivership in all jurisdictions was later made permanent.

At the inception of the receivership the possibility was contemplated that defendant might secure new money with which to continue its business and remove the receivership, and accordingly the sixteen stores were continued in operation by the Receivers with Mr. Lieurance in active charge and control. After a period of operation, the hope of securing new capital was abandoned and the sixteen stores were offered for sale as of August 31, 1926, being meanwhile kept operating as going concerns. The sales were [146] confirmed by

the various courts of the ancillary jurisdictions at various dates toward the close of October, 1926.

Prior to November 1, 1926, therefore, the activities of Mr. Lieurance, who admittedly performed the greater part of the work of the receivership, and of his attorney, had to do with the operation and management of the sixteen stores and with the sale thereof. Subsequent to that date his activities had to do with the determination of the claims against the receivership, the payment of dividends, and the details of closing the administration, a considerable part of which had to do with the matters of controversy involved in this reference.

Early in December, 1926, Judge Augustus N. Hand, sitting in the court of original jurisdiction, in New York, ordered the payment of a 40% dividend. At the hearing of New York attorneys for the Receivers, McManus, Ernst & Ernst, asked an allowance of counsel fees for themselves in the sum of $10,000 and gave notice that they would expect a second sum of $10,000 later in the proceedings; they also requested an *ad interim* allowance of fees to the Receivers in the sum of $10,000. The requested fees for New York attorneys and the Receivers met with opposition from Creditors' Committees there, who deemed them excessive, especially in view of the fact that the greater part of the work of the receivership had taken place in the ancillary jurisdictions, and the allowances were deferred by Judge Hand until, if possible, it could be ascertained what allowances would be made in the ancillary jurisdictions.

On December 10, 1926, Mr. Lieurance and Mr. Eliassen, his attorney, appeared before Judge St. Sure in the Northern District of California, obtained an order permitting the payment of a dividend of 40% to creditors and granting allowances to the Receivers [147] and their local counsel, as follows: to Mr. Gotthold $2,500, to Mr. Lieurance $7,500, to Mr. Eliassen, $10,000. On December 11th following Mr. Lieurance and Mr. Eliassen left for the northwest and on December 14th appeared before Judge Webster in the Eastern District of Washington and obtained an order for payment of the 40% dividend and allowance of fees as follows: to the Receivers, to be apportioned on final hearing, $5,000; to Mr. Eliassen $2,500. On the next day, December 15th, Judge Neterer in the Western District of Washington ordered payment of the 40% dividend and made allowances as follows: to Receiver Lieurance $12,000, to Receiver Gotthold $1,000, and to Mr. Eliassen as attorney's fees $5,000. On December 16th Judge Bean in the District Court of Oregon authorized the dividend of 40% and made allowances as follows: to Receiver Gotthold $1,000, to Receiver Lieurance $13,587.51, and to Mr. Eliassen attorney's fees $10,000.

The orders with respect to the dividend and the amounts of the allowances for fees of Receivers and their attorney, Mr. Eliassen were then made known by a telegram dated December 16th from Mr. Lieurance to Mr. Moore and on the same day communicated by Mr. Moore in behalf of the west-

ern creditors to Mr. Fraser, chairman of the eastern Creditors' Committee, in New York, together with Mr. Moore's protest against the allowance of fees (Tr., p. 133).

Meanwhile it had been arranged by telegraphic and written communication between the Receivers, completed December 16, 1926 (Tr., p. 186), that Mr. Lieurance should receive all fees allowed in the ancillary jurisdictions and Mr. Gotthold all fees allowed in the District Court in New York. The allowances made in the western jurisdiction as [148] communicated by Mr. Moore to Mr. Fraser on December 16th were before Judge Hand at the time of allowance made by him on Friday, December 17, 1926 (Tr., p. 135). The Receivers' final account, p. 605, show that on December 18, 1926, an *ad interim* allowance to Receiver Gotthold of $5,000 was paid by the New York Receiver and of $7,500 attorneys' fees to McManus, Ernst & Ernst. The same account (pp. 602, 605) show that there was cash on hand with the New York Receiver of approximately $20,350. It appears from Receivers' Exhibit 1 that on either May 4th or May 10th, 1927 (the documents comprising the exhibit being contradictory as to the date), Judge Hand directed payment of a second dividend of 10% to creditors and fees as follows: to Arthur F. Gotthold a second *interim* allowance on account of his fees as Receiver of $2,500; a second *interim* allowance of $7,500 together with certain disbursements to McManus, Ernst & Ernst on account of services rendered as attorneys for the complainants and

Receivers; a sum of $1,250 to certain attorneys for the defendant; a sum of $5,000 to S. D. Laidesdorf & Co. for services rendered to the receiver as accountants; and to Mr. Fraser, chairman of the Creditors' Committee, for payment to Francis J. Heney for services rendered, $1,500. Subsequently, as appears from the exhibits, after a rehearing, Judge Hand allowed the accountants an additional sum of $2,700, making $7,700 in all. The allowances thus made, totaling $20,745.25, seem slightly to exceed the balance on hand as above stated.

The allowances made to Receivers and to Mr. Eliassen as their attorney in the ancillary jurisdictions become the subject of controversy between Mr. Lieurance and Mr. Eliassen on the one hand, and Mr. Moore representing the creditors and Mr. Kirk and Mr. Heney, their counsel, on the other hand, and finally become the subject of stipulations dated February 1, 1927, which were signed by the parties [149] named and filed in each court of ancillary jurisdiction. Duplicate originals of these stipulations are in evidence as Receivers' Exhibit 12.

The effect of all the stipulations was that the orders fixing fees of the Receivers and of Mr. Eliassen should be amended so that Mr. Lieurance should receive $15,000 with nothing to Mr. Gotthold, it being recited that he had waived compensation in these jurisdictions; $15,000 to Mr. Eliassen; and that these amounts should not be further reduced, but without prejudice to the rights of the Receiver and his attorney to apply for or receive additional

fees, or to the right of the creditors to oppose such additional allowances.

In May, 1927, the Receivers' final account and report was filed in each of the ancillary jurisdictions. In July, 1927, under stipulations between the Receiver and the Walton N. Moore Dry Goods Co. and other objecting creditors, the Court in each of the ancillary jurisdictions made an order to the effect that the District Court of the United States for the Northern District of California might pass upon objections and exceptions to the final account and might fix the compensation to be paid the Receiver and his attorney. The whole matter of the Receivers' final account and the proper compensation, if more than $15,000 each, to be allowed to Receiver Lieurance and to Mr. Eliassen, is thus before this court on the account and the report, the objections thereto filed by Walton N. Moore Dry Goods Co. and other creditors, and an answer to these objections filed by the Receiver and his attorney.

As stated at the outset of the opening brief for the objecting creditors, the only important issues are the amount of compensation due Mr. Lieurance as Receiver, the amount of compensation [150] due Mr. Eliassen as his attorney, and the amount to be approved in the Receivers' accounts for the services of Mr.. Hershey as accountant.

By way of preface, I deem it unimportant whether attorney's fees be taken care of by direct allowance to Mr. Eliassen or by allowance to the Receiver who employed him. The creditors' brief

quotes the Supreme Court of the United States in Stuart vs. Boulware, 135 U. S. 78 to the effect that the latter is the proper practice. Nothing turns on the distinction here, nor do I think it would be error if the Court made the allowance direct to the attorney. It used to be the practice in California in the probate of estates of deceased persons to make an allowance to the executor or administrator for attorney's fees but direct allowances to attorneys have since been authorized by the statute. This Court in many cases has made allowance of attorneys' fees directly to the attorneys of Receivers. The Master is informed that Judge Van Fleet did this in the receivership of the Western Pacific Railroad; in fact, my recollection is that he appointed not only the Receivers but the attorneys for the Receivers also, deeming this a matter of equal importance to the Court. As I say, nothing turns on the distinction here, and I shall recommend the allowance of fees direct to Mr. Eliassen. Furthermore, while the orders of the various courts conferring authority on this court to pass on the compensation of the Receiver and his attorney are not clear in the matter, I shall regard the sums to be awarded as single amounts, to the Receiver and to his attorney, respectively, without attempting a segregation between the amounts to be allowed in the various jurisdictions.

While as above stated, there are only three questions to be decided, the greater portion of the voluminous objections [151] which have been filed have to do with charges by the objecting credi-

tors that Mr. Lieurance and his attorney, in obtaining orders from the various ancillary jurisdictions on December 10, 1926, and the succeeding days, fixing Receivers' and attorneys' fees *ex parte,* were guilty of violation of an existing agreement with Mr. Moore and Mr. Kirk, with duplicity toward these gentlemen and Mr. Gotthold, and with imposition and misrepresentation toward the courts that passed the orders complained of. The Master stated at the outset of the hearing (Tr., p. 2) that after reading the objections and the answer thereto he did not think these questions material in view of the fact that *that* the orders complained of had been subsequently opened for review. Nevertheless the subject matter was opened by Mr. Heney on the cross-examination of Mr. Eliassen (Tr., p. 7). The Master's expressed opinion was referred to by Mr. Crosby, though not in the form of an objection, but Mr. Henry pressed it as cross-examination having a bearing on the weight of the testimony of Mr. Eliassen and Mr. Lieurance regarding the value of their services (Tr., p. 98),—a position amplified in the opening brief, p. 15, by the additional contention that if the charges are true the Receiver and his attorneys are not entitled to compensation for services in opposing the objections and in securing additional compensation, and also as substantiating a request by counsel for the objectors for an allowance of costs and expenses incurred by the objecting creditors. The great bulk of the testimony in this record and of the presentation in the briefs concerns this question of whether the charges of

bad faith are true. I allowed the testimony at the hearing, and I shall pass upon it here, not because I believe my first impression of the materiality of the evidence was incorrect but because charges of so serious a nature against men honored by appointment as officers of the court should not be passed by, whether material to the main issue or not. [152]

The charges of bad faith in securing allowances. These charges concern the result of an interview between Mr. Lieurance, Mr. Eliassen, Mr. Walton N. Moore, and Mr. Joseph Kirk at the latter's office in the rooms of the San Francisco Board of Trade on December 9, 1926. The account as given by Mr. Lieurance and Mr. Eliassen of what took place, and the account as given by Mr. Moore and Mr. Kirk, differ point blank in essential particulars. All these gentlemen are of high standing in the community, and may be assumed to be, as I believe they are, quite sincere in their testimony of what actually took place. The first three mentioned were on the stand; Mr. Kirk's testimony, which, in general, was corroborative of what Mr. Moore said, was stipulated, a form of presentation which was of course lacking in strength in behalf of objectors' contentions since it did not possess the color and detail that might have been expected if cross-examination had been possible. It is the not unusual case where memory of long-past events, especially of conversations, has become impaired and mixed with mental understandings not communicated.

The occasion of the meeting of December 9th was a number of telegrams from New York. On De-

cember 6, 1926, McManus, Ernst & Ernst telegraphed Receiver Lieurance that they were applying that day for an order declaring a dividend of 40% and also for allowances on account of Receivers and themselves without prejudice to any applications in the west. On December 7th they wired him of an order by Judge Hand which, among other things, allowed a dividend of 40% and stated that, at the request of the Creditors' Committee, no allowances were fixed for Receivers or counsel until receiving from Lieurance an indication of the aggregate amount he and Mr. Eliassen would request in the west. He was asked to wire approximately these aggregate allowances (Tr., pp. 111–12). On December 8th a similar telegram from Mr. Love, a member of the Creditors' Committee [153] residing in Seattle, in behalf of the chairman of the Creditors' Committee in New York, with similar request for a wired reply, was received (Tr., p. 112). On December 8th Mr. Lieurance wired New York counsel to the effect that:

> "No account on account for attorneys and receivers in ancillary jurisdiction will be suggested by us. However, will ask for allowances on account, but amounts will be left entirely to the discretion of courts." (Tr., p. 113.)

Also, on December 8th, Mr. Gotthold, the New York Receiver, wired Mr. Lieurance:

> "I shall be glad to know your views as to allowances to receivers and counsel as soon as possible." (Tr., p. 115.)

On December 9th Mr. Love telegraphed Mr. Fraser in New York, chairman of the Creditors' Committee there,

> "Talked to Lieurance long distance today. He will not suggest amount of fees. Says will be satisfied with courts order. Think Lieurance's compensation should be greater than Gotthold's as he has done most of work. Think Ernst suggestion fees altogether unreasonable and that all parties should be satisfied with reasonable fees." (Tr., p. 117.)

On December 8th Mr. Fraser in New York wired Mr. Moore (Tr., pp. 251–2) stating that the Judge had signed an order for a 40% dividend, that the Receivers had applied for a partial allowance of $10,000 to be equally divided, and that the New York attorneys had asked a like amount. He stated that Mr. Ernst had told them he expected to apply for a similar amount later on. He stated that Judge Hand had asked suggestions from the committee, to which they had replied that they could not make a recommendation without knowing the allowances Lieurance and his counsel would seek in the west. Mr. Moore was asked to get in touch with Mr. Lieurance and Mr. Eliassen to determine their charges; and the telegram closed with a suggestion of expedition in these words:

> "Advise results by wire because we want to include your views in recommendation to Judge Hand." [154]

The various telegrams have been quoted as the

occasion for the consultation of December 9th and because in each of them the suggestion of telegraphic reply suggested the advisability of a prompt disposition of the matter.

Mr. Eliassen's version of what took place at the meeting of December 9th will be found at page 98 and following of the transcript, and on cross-examination at page 153 and following: Mr. Lieurance's version being at pp. 219 to 227. The testimony should be read.

Summarized as well as may be, it was to the effect that Mr. Moore and Mr. Kirk thought the allowance asked in New York were excessive since most of the work had been done in the ancillary jurisdictions. Mention was made of the 40% dividend. To their inquiry as to what Mr. Lieurance and Mr. Eliassen would ask by way of fees, response was made that this would be left to the discretion of the various courts without any recommendation by the Receiver of his counsel. Thereupon a telegram was dictated by Mr. Kirk to Mr. Fraser in behalf of Mr. Moore which is deemed by both parties corroborative of their views as to the interview, and hence is set forth here in full.

"December 9, 1926.

William Fraser, % J. P. Stevens Co.,
23 Thomas Street, New York City.

Further answering your telegram. Receiver Lieurance and attorney intend having each ancillary Western court also order dividend forty per cent. To avoid possible conflict between Eastern

and Western Courts as to amounts of allowances to receivers and their attorneys, as Chairman of Creditors' Committee here and member of New York Committee, I earnestly request that question of such allowances be deferred for time being, until receivers and attorneys and committees can exchange views and come to some agreement concerning gross amounts to be asked for. Amounts of allowances to receivers and attorneys at this time by Judge Hand may prove unsatisfactory to ancillary courts who may order different amounts resulting in confusion. As you now know from yesterday's telegrams from Lieurance to Gotthold and attorneys McManus [155] and Ernst, receiver Lieurance and attorneys in ancillary jurisdiction intend leaving amounts of allowance to discretion of ancillary courts.

WALTON H. MOORE." (Tr., p. 118.)

The last sentence in the telegram was added to Mr. Kirk's dictation by Mr. Lieurance (Tr., p. 271). Comment will be made on this telegram later.

The witnesses Lieurance and Eliassen agree that Mr. Moore then left the meeting. They further testify that in the conversation that ensued with Mr. Kirk, reference was made to a certain stipulation and order thereon which he had requested of Mr. Eliassen, and that the orders for the dividend of 40% should be obtained from the ancillary courts promptly, and at the same time the Receiver and his counsel would ask that their compensation be fixed by the various courts. Mr. Kirk agreed that this should be done at once. Mr. Eliassen stated that he

would take the matter up in San Francisco the following morning and invited Mr. Kirk to be present, and Mr. Kirk stated that it would not be necessary. Mr. Eliassen then volunteered to present Mr. Kirk's requested order at the same hearing.

Mr. Moore's version of the interview is found at pages 252 and following. He stated that all present agree that the applications for fees in New York were too high and that Lieurance and Eliassen said there would be no trouble about reaching an agreement between the representatives of the creditors and themselves as to their fees." All were in accord that most of the work had been done in the west, by both counsel and Receiver, and that as to the Receivers' fees the division should be more favorable to Mr. Lieurance, rather than an equal division as proposed in New York. There is much in Mr. Moore's testimony that suggests an assumption on his part, rather than an exact recollection of things said. At p. 254 and following the transcript reads: [156]

Q. What, if anything, was said at that time about which allowances were to be deferred?

A. All allowances. We were asking specifically that Judge Hand defer making any allowances there; and, of course, there had been no applications for allowances out in the west, here, that we knew of.

Q. Was anything said at that time about an application being made out here immediately?

A. No, there was not.

Q. Was there anything said about Lieurance and Eliassen leaving to the courts out here to fix the amount?

A. After conferences with and agreement with the creditors, or an opportunity to the creditors to be present and be heard. It all contemplated an agreement as between the creditors and the Receivers and attorneys.

Mr. Moore thinks, p. 273, that he remained to the end of the conference, but he states it as his best recollection and not as a positive fact, and I was impressed at the time that in this respect his recollection was not absolutely positive. There is no doubt that he did not hear Mr. Eliassen or Mr. Lieurance say anything about applications to be made next day. Furthermore, Mr. Moore's letter to Mr. Fraser of December 10th confirms his testimony as to his understanding of what had been agreed upon. It shows that he was strongly impressed with the excessive character of fees asked before Judge Hand and of the order, and he says: "I was impressed with the fairness of Lieurance's attitude. He expressed a willingness to submit the entire matter to the judges of the ancillary courts to fix the fees. Nearly all of the work has been done out here where the property was located and the results produced by Lieurance have been very creditable. It seems to me that a statement [157] of facts might be prepared by the attorney of Lieurance for submission to each of the ancillary courts, which could have the approval of the creditors as to its correctness, which could be submitted to each

of the courts with the request that the Judges thereof fix the compensation for the work done in his jurisdiction. When these allowances have been made, the whole could then be submitted to Judge Hand with a similar statement and he can then make such additional allowance, if any, as he thinks proper. I am in hopes that correspondence between the receivers and the attorneys may result in some mutual understanding which will avoid conflict, giving them what is their just due and no more." (Tr., p. 257.)

Mr. Eliassen (Tr., p. 285) and Mr. Lieurance (Tr., p. 299) said nothing was said on December 9th about any statement of services being rendered or any discussion had with creditors.

It is evident from Mr. Moore's letter of December 10th that he left the interview of December 9th thinking that his telegram of that date was sufficient to postpone the application in New York and that the subject of fees would be taken up in the west in the indefinite future. In view of the fact that the occasion for the meeting and the burden of it was a criticism by creditors here of the requested allowances in New York, and in view of the further fact that all the wires suggested a prompt determination of fees in the west, with telegraphic response, it seems strange that Mr. Moore did not arrange to his own satisfaction as to the time when this question of western fees was to be determined.

There is nothing in the telegram of December 9th, above quoted, which settles the matter in dispute. It is true that reference is made to a deferring of

allowances to Receivers and their attorneys pending an interchange of views and an agreement concerning gross amounts to be asked for. The language of the telegram in [158] this respect can be understood by either side to this controversy as being consistent to a reference to New York allowances only, as Lieurance and Eliassen understood it, or to all allowances as Mr. Moore understood. It is to be noticed, however, that the concluding sentence added by Mr. Lieurance, to the effect that he intended to leave the whole matter to the discretion of the ancillary courts, is not consistent with any program of prior conference and agreement as to the amounts, with the creditors. Both this and his statement that he did not intend to suggest any amount to the Court was an alternative that plainly was intended to avoid conference with creditors and a possible wrangling as to the amounts to be asked. It was a fair enough proposition since either side might meet disappointment. Apparently Mr. Moore did not appreciate its significance in the entire body of the telegram.

Very likely Mr. Lieurance and Mr. Moore, as business men, might well have thought that a program of submission to the decision of the Courts without suggestion on the part of the Receiver or his counsel was one that could be carried out; but Mr. Kirk and Mr. Eliassen, as experienced attorneys of many years' standing, should have known that in every case where an application is made to a Judge for the fixing of fees he naturally and inevitably makes the inquiry as to what the petitioner thinks

he ought to have so that his mind may have a concrete figure to work upon. So far as Mr. Kirk is concerned, I am led to the conclusion that the intention expressed in the telegram that the Receiver and his counsel would leave the amounts, without suggestion, to the discretion of the Judge involved two things; first, that no prior consultation with creditors was contemplated, and secondly, that the amounts finally granted might rest upon prior inquiry by the Court as to what Mr. Lieurance and his attorney thought proper. [159]

The real ground of complaint on the part of the objecting creditors, if they have any, is that the applications to the Court were made without notice to the objecting creditors. We have, of course, the testimony of Mr. Eliassen and Mr. Lieurance that oral notice of an application the next morning was given to Mr. Kirk and that he did not care to attend; and we have the stipulated evidence of Mr. Kirk that this was not so, and of Mr. Moore that he did not hear it.

It must have been realized by Mr. Kirk, though not necessarily by Mr. Moore, that an application for Receiver's compensation and counsel fees would accompany the order declaring a dividend. This is a natural and the usual practice. All parties were agreed that the orders in the ancillary courts for payment of the dividend should be made at once, so that creditors would receive early payment. If a separate fixing of the fees were contemplated it would either require another journey through the jurisdiction or a postponement until the filing of

the final account. In any event, if it was of importance that the applications should not be made when it might be expected, in the absence of agreement, that they would be made, there should have been immediately prepared a written stipulation covering the question of notice. Mr. Kirk was not entitled to any notice as an attorney of record, and I am forced to the conclusion that it was his duty, rather than that of Mr. Eliassen, to have made the question of notice of these applications a matter of written stipulation if it was a fact that he was not notified by Mr. Eliassen of the presentation the following morning. Courts require written stipulations as evidence of agreements between counsel, not because they believe that witnesses or attorneys will lie about facts but because experience has taught the fallibility of memory as to oral understandings. [160]

What transpired following December 9th can be briefly related. The matter of the dividend was presented to Judge St. Sure on the morning of the 10th and an order was granted accordingly. The question of compensation of Receiver and counsel was presented; the testimony given; the statement made that the amount would be left to the discretion of the Court. The Court asked what had been done in New York and learned that an application for $10,000 for Receiver and for counsel had been made there, and thereupon allowed $10,000 to Mr. Eliassen and $10,000 to the Receivers divided one-fourth to Mr. Gotthold and three-fourths to Mr. Lieurance. Mr. Eliassen and Mr. Lieurance left Oakland De-

cember 11th, and proceeded successively to Spokane, Seattle, and Portland. The orders previously recited were made in those jurisdictions. In each of them the Receiver and his counsel were asked what they desired and the statement made that it was left to the Court's descretion, but on being pressed the Receiver said that he thought 5% of the sales would be proper. The Courts acceded. This history of proceedings in these courts is clearly given by Mr. Lieurance in his testimony (Tr., pp. 243 to 246). See, also, in confirmation of his testimony, his letter dated January 10, 1927 (Tr., p. 292 and following).

Meanwhile Mr. Moore received from Mr. Fraser, chairman of the Creditors' Committee in New York (Tr., pp. 258–60) a letter written December 9, 1926, evidently before Mr. Moore's telegram of that date had been received, in which the writer explained the situation in New York and emphasized the desire of the creditors and of Judge Hand for an understanding with Mr. Lieurance and his attorney. Mr. Moore states (Tr., p. 260) that on receiving this letter he telephoned the office of Mr. Lieurance and learned that he and Mr. Eliassen had gone north; that he visited Mr. Kirk and expressed his suspicion of their good intentions and suspected that [161] they had gone to the ancillary courts to have their fees fixed notwithstanding an agreement made on December 9th that it would be the subject of conference. Considering the apparent harmony which had thus far prevailed and the good opinion expressed by Mr. Moore of Mr. Lieurance, I am at a loss to understand why he was so ready

to assume that there was a violation of any agreement. Even consistent with his belief that there was to be a further conference on the subject of fees, he might readily have assumed, and Mr. Kirk must have advised him, that the procuring of orders for the 40% dividend were matters needing prompt attention. At any rate, he had Mr. Kirk send a telegram on December 15, 1926, to the Receiver or his attorney at Seattle suggesting the desirability that no application for fees be made until the matter could be again discussed upon the Receiver's return. When the telegram was received all allowances had been made except the one in Portland by Judge Bean. The Receiver and his attorney made no reply at that time, obtained the order in Portland as stated, and immediately thereafter, on December 16th, telegraphed to Mr. Moore the aggregate of allowances in all the ancillary jurisdictions (Tr., p. 264). Mr. Moore immediately repeated the telegram to Mr. Fraser in New York, stating that he was astounded that the allowances were had without prior agreement with the creditors, and expressed his opinion that they were excessive. On December 20th a conference was had in San Francisco between Mr. Kirk, Mr. Moore, Mr. Lieurance and Mr. Eliassen, of which Mr. Moore said (Tr., p. 267):

> "We asked an explanation of why, in the face of the agreement we had had at the previous conference, these men had slipped off and without our knowledge had secured an allowance from the courts without any representation of the creditors, and far in excess of any

> amounts that we had contemplated, or that they themselves had expressed themselves as thinking sufficient in the case of the application before Judge Hand in New York. There was much said there, Mr. Heney, ... that I said would not bear repetition. . . . . I think I expressed myself and my conviction [162] of their actions about as freely as I ever did about anything. I told them, I think, it was crooked."

At this and subsequent conferences Mr. Moore and Mr. Kirk insisted that the orders be absolutely set aside, but after prolonged and probably heated negotiations it was finally arranged by the good offices of Mr. Heney and Mr. Eliassen that $15,000 each should be paid to the Receiver and to his attorney as a minimum fee and that the claim for further fees under the orders should be reviewed.

I have stated the facts at some length but as briefly as is possible to afford an explanation of a situation which seems to me rather extraordinary. I have no doubt of the sincerity of Mr. Moore in believing then and now that a further conference as to fees had been agreed upon at the meeting of December 9th and that the obtaining of these orders without further conference and without notice (as he understood) was in violation of that agreement. I think, nevertheless, that Mr. Moore is open to criticism in assuming at once that men of the standing of Mr. Lieurance and Mr. Eliassen would be "crooked," would violate an*d* agreement, and would impose upon the courts of which they were officers.

Such things are not ordinarily done and, moreover, would be futile because courts are most ready to review their orders in case of any charge made of imposition. What Mr. Moore should at once have assumed was that there had been an honest misunderstanding between him and the Receiver and his attorney. Such was undoubtedly the fact. The telegram of December 9th, hereinabove quoted in full, lends itself equally to the interpretation made by each of the contending parties here. Conferences as to Receivers' allowances (implying Mr. Lieurance also) are referred to, but the concluding sentence, added by Mr. Lieurance, that he proposed to leave the amount thereof to the courts, in inconsistent with any prior conferences with [163] creditors. It was not unfair, since he as well as the creditors would take the chance of disappointment in the amounts awarded. I have no doubt, on the other hand, that Mr. Lieurance and Mr. Eliassen were equally sincere in their understanding that no further conferences wth creditors were to be had. Furthermore, in view of Mr. Moore's rather doubtful recollection on the point and the positive testimony of Mr. Lieurance and Mr. Eliassen, I believe that Mr. Moore was not present throughout the conference of December 9th; and the preponderance of the proof is that Mr. Eliassen gave Mr. Kirk oral notice of an intention to make application the next morning before Judge St. Sure and that Mr. Kirk was satisfied that the application be made without his presence.

My conclusion is that the creditors' opposition, so far as it has involved the serious charges against the integrity of Mr. Lieurance and Mr. Eliassen, was not only ill-founded on the facts but ought not to have been made. A review of allowances deemed excessive could readily have been secured without any such charges, and in fact it was secured by agreement readily reached between Mr. Heney and Mr. Eliassen. There is some suggestion in the evidence and in the briefs that Mr. Lieurance did not always make full disclosure to his co-receiver, but I pass that by as having nothing to do with the controversy about the securing of the orders of allowance from the courts. It is my considered view that Mr. Lieurance and Mr. Eilassen are not open to criticism of their conduct in securing the orders of allowance as in these proceedings made; that they violated no agreement with the creditors in doing so and they neither misrepresented to nor considered facts from the courts, nor in any manner imposed upon the courts in securing the orders complained of.

THE FINAL AND SUPPLEMENTAL ACCOUNT, AND THE ALLOWANCES TO HERSHEY. [164]

The Receivers' final account, filed herein on May 19, 1927, is a document of 605 pages. I have not felt it incumbent upon me to attempt an audit of this account or to check the computations. I have concerned myself solely with the objection specifically urged which concerns the amount of charges

of Mr. Philip Hershey, an accountant for the Receiver, which charges were paid by the Receiver as rendered.

I may say at once that I do not agree with Mr. Moore or with counsel for the creditors that an accountant was unnecessary and that the work could have been done by an ordinary bookkeeper at a salary of $200 or $250 a month. Furthermore, the orders of original appointment of the Receivers authorized employment of such accountants as the Receivers deemed necessary, and on August 9, 1926, this Court (and possibly the other ancillary Courts) specifically approved the employment both of Mr. Eliassen as attorney for the Receiver and of Philip A. Hershey & Co. as accountants for the Receiver. Later an order was entered authorizing Mr. Hershey to proceed to New York to examine the books there. If the creditors had thought that an ordinary bookkeeper could do the work, they should have appeared early in the proceedings and raised the question before the work was done by an accountant. The amount of his compensation is, however, a matter that is properly reviewable at this time. The facts, shown by the testimony of Mr. Lieurance and Mr. Hershey, are that he was employed with no fixed contract for his compensation but with a drawing account of $300 per month on account thereof; that this sum was paid from June, 1926, until December, 1926, a total of seven months, or $2,100, and that on December 31, 1926, he presented a bill and there was paid to him a fur-

ther sum of $5,900. This latter is the item specifically objected to by the creditors. [165]

The final account, pp. 52 to 54, which, except for certain earlier items, covers disbursements of the Receiver during 1927, shows no further payment to Mr. Hershey of the $300 monthly but it does show, p. 54, that on May 7th there was paid to him the sum of $2,000. This item is not objected to, but I think because it was not discovered by the objecting creditors. The frame of the account is such that the Receivers' disbursements occur in two widely separated portions of the report. It was discoverable from the index on the first page of the report but was nowhere mentioned in the testimony. I assume an objection to this item though it was not in fact made. The total amounts paid to Mr Hershey were:

$2,100 of monthly advances,
5,900 in December, and
2,000 in May, 1927, thus amounting to

$10,000, which is the amount which Mr. Hershey testified (Tr., p. 55) was the reasonable value of his services. I am bound to say that I think the failure of Mr. Hershey, Mr. Lieurance and Mr. Eliassen to expressly disclose to the Master and to opposing counsel the fact that this payment had been made is open to criticism. I*n* was left by Mr. Hershey's testimony with the impression that he had been paid $8,000 for services which he deemed worth $10,000.

However, the fact remains that, on the evidence before me, the amount thus asked and paid was a reasonable sum for laborious services efficiently per-

formed. The only opposing evidence was that it could have been done by a mere bookkeeper, a contention already disposed of; and further, the evidence of Mr. Ernst in his deposition that Mr. Lieurence in detailing his monthly expenses had included Hershey at $300 a month and that Mr. Hershey in a conversation with Mr Ernst in New York had stated that he was on a monthly basis of charge. There could easily have been a misunderstanding between Mr. Lieurance and Mr. Ernst on the theory that Lieurance was giving only his recurrent monthly disbursements. [166] The other suggestion is not so easily reconciled, but must be deemed met by the contrary testimony of both Mr. Lieurance and Mr. Hershey, that the $300 paid monthly was an advance on account of fees.

The Receiver has appended to his supplemental report a statement by Mr. Hershey as to services rendered after May, 1927, and this statement has been the subject of further testimony by Mr. Hershey. It has not been paid by the Receiver, and I therefore have not his judgment expressed by the fact of payment or by testimony on the stand as to the reasonable value of the service. Neither has Mr. Hershey placed any figure on the value of the service, leaving it to the discretion of the Master. It covers, among other things, a two weeks' absence in Oregon and Washington attending hearings on the final account and also attendance on this hearing. I do not think I can take into account the fact that Mr. Hershey was in Ohio on other business when called to attend this hearing I recommend

a further allowance to Mr. Hershey, to be in full of all services, of $750.00 plus $19.71 expressage charges on transportation of records of the receivership from Oakland to this hearing in response to the request of counsel for the creditors, a total of $769.71.

The Receivers' final account and report is therefore approved, except for the supplement thereto covering receipts and disbursements of the New York Receiver as to the correctness of which no evidence was produced; and that is a matter, furthermore, for the New York court to pass on.

The supplemental account and report, filed herein on October 19, 1927, is likewise approved as rendered.

This supplemental report shows a balance on hand of $38,694.76. This sum is obviously a guide since it represents a [167] limit to the further allowances asked for Receivers' compensation and attorneys' fees. It is, moreover, less than such limit since there must be deducted therefrom the abovementioned allowance of $769.71 to Mr. Hershey and any expenses incurred and paid by the Receiver for this hearing, including, for example, reporter's fees, the fees which this court may allow to the Special Master for his services, and allowances, if any, to counsel for the objecting creditors. As regards Special Master's fees, the alternative will be between charging them upon the fund in hand or charging them to objecting creditors, and in view of all the circumstances my recommendation is that they shall be charged upon the fund.

ATTORNEY'S FEES TO MR. ELIASSEN.

The Receivers' brief suggests as reasonable for Mr. Eliassen $15,000 in addition to the $15,000 already received; and for Mr. Lieurance $22,500 in addition to the amount already received. As suggested at the close of the last subdivision of this report, the amount on hand is not sufficient to meet these and other demands upon the fund.

Mr. Eliassen's service is described in detail in a statement of such service received in evidence as Exhibit 2. It is a transcript of a methodically kept office record of the employment of his time, in accurate detail as to the subject of employment and as to days when the work was done though not always specific as to the amount of a day consumed. There were no matters of moment in the nature of contested litigation, but the demands upon his time are shown to have been extensive and for a considerable portion of the period continuous, day after day, and consuming the greater part of the time available to him for his professional work. In the figure to be awarded are amounts due to local counsel outside California, payable by Mr. Eliassen to those attorneys, in [168] the sum of $2,620. Various lawyers gave opinion evidence. Mr. Sooy fixed the reasonable value of the services shown in Exhibit 2 at $42,620; Mr John L. McNab at $36,000; Mr. C. M. Bradley at $25,000 to $30,000; and Mr. Eliassen himself at $30,000. For the objectors Mr. Kreft, Referee in Bankruptcy here, valued the

service at from $20,000 to $25,000; Mr. Hayes, an attorney, formerly referee in Bankruptcy in Oakland, $25,000; Mr. Newmark, an attorney specializing largely in bankruptcy matters, at $20,000; Mr. Heney in his brief, p. 67, says: "A fee of $100 per days for a period of five months would amount to $15,000, and that would certainly be liberal compensation for the routine work which was performed by Mr. Eliassen in this matter." The answer to this suggestion is that a period of five months does not by any means represent the period of service, which continued until the filing of the final report in May, 1927, to take no account of the time occupied in preparing for this hearing. The stores were sold at the close of the five months' period, but after that the claims were determined and a great deal of necessary work done. No doubt the time of employment was prolonged by the controversy as to proper fees. A number of cases are cited from respectable courts, including some from our highest court, as to amounts allowable in those cases for Receiver's fees and attorney's fees Such precedents, despite their source, are of little help. What would have been an adequate fee in 1880 is not helpful in determining a fee to be assessed in 1927. The allowance of $27,500 made in the orders of the ancillary courts which here in effect are under review, are much more cogent as precedents; and those were *ad interim* allowances only, contemplating the possibility of additional allowances at this time, on the close of the administration.

compensation (opening brief, p. 60) for the service performed."

The statute applicable to bankruptcy matters has no binding force upon this court in an equity receivership, though of course it is entitled to consideration as one precedent in the way of a legislative expression of opinion regarding a similar service. I give it, however, very small weight since I am not bound, feeling in this regard much as the Judges of the ancillary courts must have felt when they fixed the compensation in the original orders. I have small sympathy with the idea wihch some Courts entertain that court officers, being at the Court's mercy as to their compensation shall be paid, when their work is done, less than the going value of the services in the commercial world. I have a like lack of sympathy for Courts or Receivers who regard a receivership as an excuse [171] for exorbitant fees far beyond the going rate. A middle ground must be struck. The creditors here were fortunate in getting hold of a man who, having retired to a considerable degree from active business, was free to exercise his undoubted talents for their benefit. He did so, and secured for the creditors what appears to me from my knowledge—not, however, particularly enlightened by the evidence before me—to be a liberal dividend upon their claims. It seems to me to come with ill grace from the creditors to contend in such case for a meager allowance.

It is to be remarked that the allowances made by Judge Hand to the receiver and to his attorneys

in New York, who performed a comparatively small part of the entire service, suggest much higher allowances in the courts of ancillary jurisdiction. In this regard I endeavor to give full effect to the fact that standards of compensation in New York City are and must necessarily be higher for a given service than in western jurisdictions and I have no disposition to criticize the eastern allowances. It is the much greater amount of service and greater accomplishment in these courts that suggests the higher allowances.

It is suggested by the creditors (for example, closing brief, p. 3) that in fixing the compensation of such an officer of the court as a Receiver we must take into account the salaries fixed by law for Federal Judges. I agree that such salaries are one item in the consideration, but they afford very little particular assistance. The salaries of our Judges, while inadequate, have attracted to the bench lawyers who have sacrificed larger incomes at the bar, but against this must be balanced the security of tenure for life, the provision for retirement in old age, and the dignity and responsibility of the office. An occasional employment like that of a receiver can hardly be compared with a vocation for life. [172]

The opinion of the Supreme Court as to compensation to a Master in Chancery has a certain analogy. In the Consolidated Gas Company litigation the Court below awarded to a Special Master for hearing and reports in eight cases $118,000, which figured out on a per diem basis a sum of $418 per day. On appeal this was cut by the Supreme

Court to $49,250 or about $175 per day. The Master was occupied 282 days, which the Supreme Court assumed to be about the equivalent of a year's work. In the opinion, in Newton vs. Consolidated Gas Co., 259 U. S. 101, at 105, the Court said:

> "The value of a capable Master's services cannot be determined with mathematical accuracy; and estimates will vary, of course, according to the standard adopted. He occupies a position of honor, responsibility, and trust; the Court looks to him to execute its decrees thoroughly, accurately and impartially, and in full response to the confidence extended; he should be adequately remunerated for actual work done, time employed, and the responsibility assumed. His compensation should be liberal, but not ex*h*orbitant. The rights of those who ultimately pay must be carefully protected; *and while salaries prescribed by law for judicial officers performing similar duties are valuable guides, a higher rate of compensation is generally necessary in order to secure ability and experience in an exacting and temporary employment which often seriously interferes with other undertakings.*"

Considering the amount of the fund available and all the evidence as to the value of the service, I conclude that a reasonable allowance in full for the services of Mr. Lieurance as Receiver would be the sum of $35,000.00, or $20,000.00 in addition to the $15,000.00 already received.

It is suggested by Mr. Heney, for the objecting creditors, that this Court should make a reasonable allowance to the creditors to cover their costs, including, I presume, a counsel fee. I am not sure that I should consider this subject matter within the terms of the order of reference. The doubt being [173] present in my mind, I feel that the decision should be left with the Court, especially as the elements that will guide the exercise of the Court's discretion are as apparent to the Court as they are the Master. On the one hand there is to be considered the fact that in my opinion the case of the objecting creditors not only lacks substance but I think it ought never to have been pressed. I feel that Mr. Kirk should have advised Mr. Moore to forget his anger. On the other hand, it is proper to say that objectors' counsel, Mr. Heney, has presented unpleasant charges with courtesy and tact, as well as ability. The balance that is left will amount to a sum in the neighborhood of $1,000 or $1,500, a sum hardly capable of division among creditors and therefore of no particular interest to them. Indeed, if I had cut the fees allowed by several thousand dollars in the case both of the Receiver and of his attorney, a fund for further dividend would not be created. As the matter is thus resolved, the question before the Court is whether the small balance remaining shall be transmitted to the New York court, presumably for apportionment between the Receiver and the counsel there, or be applied to the objectors' costs.

It was stipulated at the close of the hearing that

the usual practice of this Court, prescribed by Rule 114, whereby a Master's report is first announced in draft to give opportunity for objections, should be here dispensed with, and the final report filed by the Master when complete.

Summarizing my conclusions:

(1) The final and supplemental reports and accounts of the Receiver should be approved as rendered.

(2) The Receiver should be directed to pay out of funds in his hands:

(a) To Phillip A. Hershey, his accountant, $769.71, in full of [174] all demands.

(b) To Edward R. Eliassen the sum of $15,000.00 in full of all services as attorney for the Receiver.

(c) To A. F. Lieurance, in full of all services as Receiver, the sum of $20,000.00.

(d) To the Special Master herein such reasonable compensation as to this Court shall seem proper for his services herein, not exceeding $1,500.00.

(3) The Receiver shall submit to the Court a final supplemental account of his receipts and disbursements, and pay any balance in his hands and transfer any property other than money in his hands belonging to the receivership as the Court may direct; and thereafter be discharged.

IN WITNESS WHEREOF, I have signed and filed the above as my final report herein, and noti-

fied the parties of my action, this 10th day of January, 1928.

H. M. WRIGHT,
Special Master. [175]

INDEX OF EXHIBITS.

[Endorsed]: Filed Jan. 19, 1928. [176]

[Title of Court and Cause.]

EXCEPTIONS TO REPORT OF SPECIAL MASTER.

The Walton N. Moore Dry Goods Co. and other objecting creditors except to the report, the findings of fact and the conclusions of law of the Special Master as follows:

First: Because the findings in the respects hereunder set out, are not supported by the evidence.

Second. Because the findings, in the respects hereunder set out are contrary to the evidence.

Third. Because the conclusions of the Master in the respects hereunder set out are contrary to law.

1. Except particularly and upon each of the above-mentioned grounds to the finding appearing on page 30 of the report, and reading as follows:

> "Considering the amount of the fund available and all the evidence as to the value of the service, I conclude that a reasonable allowance in full for the services of Mr. Lieurance as receiver would be the sum of $35,000, or $20,000 in addition to the $15,000 already received;"

and also to the conclusions appearing on pages 31 and 32 of the report and reading as follows:

> "Summarizing my conclusions:
>
> (1) The final and supplemental reports and accounts of the receiver should be approved as rendered. [177]

(2) The receiver should be directed to pay out of the funds in his hands:—

* * * * * * * * * * *

(c) To A. F. Lieurance, in full of all services as receiver, the sum of of $20,000";

for the reasons and upon the grounds that the undisputed evidence shows that the assets of R. A. Pilcher Co., Inc., at the time the Receivers were first appointed in New York included $75,000 cash on hand in bank, the entire amount of which was made available to the Receivers for the continuance of the business; together with goods and merchandise on hand in the sixteen stores on the Pacific Coast amounting in the aggregate at cost prices, to the sum of $599,717.72 as shown by an inventory which was taken by the Receivers as of June 21, 1926; and together with fixtures and equipment and leasehold improvements of the aggregate appraised value of $176,215.84 as shown by the statement of the New York auditors; and because the undisputed evidence also shows that during the period of five months from June 3d to November 3d, 1926, merchandise aggregating approximately $100,000 was purchased by the Receivers to replenish stock with funds received from the sales of other receivership merchandise, and that the total sales of merchandise in all the stores during that entire period, including the turnover of merchandise aggregated the sum of $499,263.28, and it is impossible to determine whether or not any actual net profit was made by or through such conduct of

the business of those stores, and also that on August 31, 1926, the Receiver had on hand the sum of $228,178.07 in cash, and that no dividends then had yet been paid to creditors, and that subsequently and at or about November 3d, 1926, all of the stores were sold in bulk in amounts aggregating the sum of $257,600, and that these sales in bulk were made as of August 31, 1926, and that it is impossible to determine from the evidence what aggregate amount of sales of merchandise were made between August 31, 1926, and November 3, 1926, and the sales of the stores were made as going concerns, [178] respectively, and that it appears from the final account of the Receiver herein that the net amount of money which actually came into the hands of the Receivers from the liquidation of the assets, and was available for the payment of creditors and expenses of administration, was the sum of only $466,980.41, and as is shown by the general summary of receipts and disbursements found at page 2 of the final account.

And for the further reason and upon the ground that 5% of said net amount of $466,980.41 would be $23,349.02 only, and that said A. F. Lieurance testified that in his opinion 5% upon the sales of the assets would be a fair and reasonable compensation for the receivers; and that A. F. Lieurance as Receiver has already received $15,000.00 and Arthur F. Gotthold as Receiver has already been paid $7,500.00, thus making a total of $22,500.00 to both Receivers as and for their compensation; and because Receiver Gotthold testified at pages 24 and

25 of his deposition that he was familiar with the details of the work performed by the Receivers in both the western and eastern jurisdictions, and at page 6 of his deposition he testified that "I think $20,000 would be a fair compensation; that is $5,000 in addition to what he has already received," to be paid to A. F. Lieurance as Receiver; and because other and further proper expenses of administration have been incurred in the New York jurisdiction by the Receivers since the hearing before the Special Master herein as is evidenced by the affidavit of Grant H. Wren hereto attached and reference to which is hereby made; and for the further reason and upon the ground that 5% of such sales would be not merely liberal but excessive compensation for both Receivers, under the circumstances shown by the evidence herein, and that would be unfair to the creditors and unreasonable and very excessive to allow such 5% upon the aggregate amount of money received from the turnover of the merchandise during the conduct of this business. [179]

And that the major portion of the aforesaid net amount of $466,980.41 was disbursed by the Receivers prior to this hearing as follows:

Preferred claims	5,816.34
Dividends to creditors	359,836.57
Cash transferred to New York Receiver.	25,000.00
Paid to Attorney Eliassen for services..	15,000.00
Paid to A. F. Lieurance for services as	

Receiver	15,000.00
Fees of Special Master	250.00
Administrative expenses	4,104.22
	$425,005.13
Balance on hand at time of filing second account	$ 41,975.28

The foregoing items are found on page 7 of the final account.

And that there was no important litigation; and that the total amount of creditors claims filed, including both general and preferred or secured, aggregated $751,860.09. Of these the total amount claimed as general was $746,043.75 and the total amount allowed as general was $718,794.12; and the total amount allowed as preferred or secured claims was $5,816.34.

And that the Receivers were not called upon to and did not perform any extraordinary service of any kind, as appears from their own evidence of what was done.

And for the further reason and upon the ground that a very large and substantial part of the work which was properly that of the Receiver personally was performed by Phillip A. Hershey and Edward R. Eliassen and they and each of them have already been paid for the same and the creditors ought not to be required to pay double for such services.

That the oral and documentary evidence upon which this exception is based is as follows:

Receiver's Exhibits 1 to 12, both inclusive.

Testimony of A. F. Lieurance appearing in reporter's transcript at pages 7 to 25, both inclusive. [180]

Testimony of Phillip A. Hershey appearing in reporter's transcript at pages 28 to 39, both inclusive, and also at pages 47 to 54, both inclusive (all under direct examination) and also his testimony under cross-examination appearing in reporter's transcript at pages 55 to 64, both inclusive.

All of the deposition of Arthur F. Gotthold.

All of the deposition of Walter E. Ernst.

Testimony of Edward R. Eliassen under cross-examination appearing in reporter's transcript at pages 96 to 130, both inclusive.

All of the testimony of Walton N. Moore appearing in the reporter's transcript at pages 71 to 90, both inclusive.

All of the testimony of Joseph Kirk appearing in the reporter's transcript by stipulation, as is stated in the Special Master's report.

Also all telegrams, letters and evidence appearing in reporter's transcript at pages 91 to 138, both inclusive.

Also telegram dated June 4, 1926, from McManus, Ernst & Ernst to A. F. Lieurance appearing in reporter's transcript at pages 12 and 13 thereof.

Also telegrams and letters between A. F. Lieurance and Attorneys McManus, Ernst & Ernst appearing in reporter's transcript at pages 13 to 18, both inclusive.

Also all of the evidence appearing in the reporter's transcript, and in the written statements of A. F. Lieurance, Edward R. Eliassen and Phillip A. Hershey which were admitted in evidence by stipulation.

Also all of the reasons and grounds set forth in the opening and closing briefs on behalf of Walton N. Moore Dry Goods Co. and other objecting creditors which were filed with the Special Master and returned to this Honorable Court by him with his report. [181]

2. Except particularly and upon each of the above-mentioned grounds to the finding appearing on page 27 of the Report and reading as follows:

> "Taking into consideration all the circumstances, I conclude that a reasonable compensation to Mr. Eliassen for services to the receiver is the sum of $30,000 or $15,000 in addition to the $15,000 already received";

and also to the conclusions appearing on page 31 and 32 of the Report and reading as follows:

> "Summarizing my conclusions;
>
> (1) The final and supplemental reports and accounts of the receiver should be approved.
>
> (2) The receiver should be directed to pay out of the funds in his hands;
>
> (b) To Edward R. Eliassen the sum of $15,000 in full of all services as attorney for the receiver";

for the additional reasons and upon the additional grounds to those hereinbefore stated that as is stated by the Special Master on page 25 of his report "there were no matters of moment in the nature of contested litigation"; and that the testimony of Edward R. Eliassen under cross-examination shows that he continued to attend to all of his other legal practice during the period of time that he was performing services as attorney for the Receiver, A. F. Lieurance in this matter; and that the period of time during which his constant or active services were required covered a period of only five months, to wit, June 3d to November 3d, 1926, and that much the greater part of his services thereafter arose out of the fact that A. F. Lieurance, as Receiver, and Edward R. Eliassen as his attorney refused to grant the requests of the co-receiver, Arthur F. Gotthold and the attorneys for the Receivers, Messrs. McManus, Ernst & Ernst, and William Fraser as chairman of the general committee representing all the creditors for them and each of them, to state in advance of the fixing of any fees for either the Receivers or the attorneys or any of them, by the New York Court or any of the Courts in the [182] western jurisdictions, what amount of compensation in the opinion of A. F. Lieurance would be fair and reasonable for the Receivers jointly or for said A. F. Lieurance alone as Receiver and/or what amount of compensation would be fair and reasonable for Edward R. Eliassen for his services as attorney for A. F. Lieurance as Receiver; and that said Edward R. Eliassen and

A. F. Lieurance proceeded *ex parte* to secure large *ad interim* allowances to A. F. Lieurance as Receiver and Edward R. Eliassen, as attorney in each and all of the courts in the western jurisdiction; and that the allowances so secured by them respectively were each and all deemed and declared to be excessive by said Co-receiver Arthur F. Gotthold and by Messrs. McManus, Ernst & Ernst, the New York attorneys for the Receivers, and by William Fraser, the chairman of the general committee for all the creditors as well as by Walton N. Moore, the president of the Walton N. Moore Dry Goods Co., who was a member of the general committee representing all of the creditors, and was also the chairman of the local Creditors' Committee in San Francisco; and that thereby as is stated by the Special Master on page 26 of his report "No doubt the time of employment was prolonged by the controversy as to proper fees."

And for the further reason and upon the ground that Messrs. McManus, Ernst & Ernst were employed and acted as attorneys for both the Receivers, and they have already had *ad interim* allowances by the New York Court and have been paid the sum of $15,000.00 and that Walter E. Ernst of said firm of attorneys came to California in the latter part of June, 1926, and held a conference with A. F. Lieurance and Edward R. Eliassen concerning the working out of the receivership, the management of the business incident thereto and the policy to be pursued by the Receivers and the adoption of a uniform plan to be approved by all

parties in interest for the carrying on of the receivership and the improvement of the business and the ultimate liquidation thereof; and that [183] Walter E. Ernst testified as appears on page 6 of his deposition that he believes

> "that much of the added work and effort of Mr. Lieurance was caused by controversial letter writing between the east and west, as to matters which were legal in their aspect and could have been, and I believe should have been, readily decided by either his attorney in the west or Messrs. McManus, Ernst & Ernst in the east, who were attorneys for both Receivers";

and that he further testified as appears on the same page of his deposition that

> "I attended a meeting of the Committee of creditors of R. A. Pilcher Co., Inc., which Committee was duly elected in the latter part of May, 1926. All of the members of the Committee were present, except Mr. Love and Mr. Moore. At the said meeting, which was held in the month of March, 1927, it was unanimously resolved by those present that opposition should be made to the payment of any further fees or allowances to either Mr. Lieurance or Mr. Eliassen";

and that he further testified as appears on pages 8, 9 and 10 of his deposition that

> "I wish to add, if it may aid anyone in comparison of fees, that my office gave its attention to this matter daily from the day we were retained late in May until the end of

1926. That during that time, I took the trip to the west, to which I have heretofore referred, occupying, as I recall it, a little less than three weeks. That there were many appearances in court. That in the year 1927 I appeared before Mr. Cardozo the Special Master on at least twenty occasions for the purpose of taking testimony in the contested claims. That exclusive of court work, there were almost daily conferences with the Receiver in New York. There was correspondence by mail and telegram, with Mr. Lieurance and with Mr. Eliassen. That there was correspondence to the extent of an average of no less than three letters a day with various creditors. That during the month of August of 1926, there were frequent conferences with persons who it was thought could be induced to invest sufficient money to rehabilitate the business. That my office endeavored for about a month in the latter part of the summer of 1926 to induce purchasers to take over the business. That as a result thereof, at the hearing before Judge Hand, for the purpose of disposing of the assets [184] of the corporation, there was approximately ten bidders present, all of whom were responsible and were ready to bid, except for the restrictions that were necessarily placed upon the sale by reason of the notice that was sent from Oakland. That all steps as to policies taken by my firm were taken only after con-

ference with and meeting of the Creditor's Committee."

And for the further reason that there are not sufficient funds left on hand with which to pay the whole of the aforesaid allowances to A. F. Lieurance as Receiver and Edward R. Eliassen as his attorney, respectively, unless the additional proper expenses of administration, which have been incurred in the New York jurisdiction by the Receiver since the hearing before the Special Master herein, are left unpaid.

That the oral and documentary evidence upon which this exception is based is the same as that hereinabove enumerated under the preceding exception.

3. Except particularly and upon each of the above-mentioned grounds to the finding appearing on page 23 of the report and reading as follows:

> "However, the fact remains that, on the evidence before me, the amount thus asked and paid was a reasonable sum for laborious services efficiently performed"; (to wit, the sum of $10,000.00 to Phillip A. Hershey, as an expert accountant)

and also to the finding appearing on page 24 of the Master's report and reading as follows:

> "I recommend a further allowance to Mr. Hershey to be in full of all services, of $750.00 plus $19.71 expressage charges on transportation of records of the receivership from Oakland to this hearing in response to the request of counsel for the creditors, a total of $769.71";

and also to the conclusions appearing on pages 31 and 32 of the report and reading as follows: [185]

"Summarizing my conclusions:—

(1) The final and supplemental reports and accounts of the Receiver should be approved as rendered.

(2) The receiver should be directed to pay out of funds in his hands:

(a) To Phillip A. Hershey, his accountant, $769.71 in full of all demands";

for the reasons and upon the grounds that it was a wholly useless and unnecessary expense to employ an expert accountant in addition to a competent bookkeeper during the entire period of the receivership administration and it appears from the evidence of Phillip A. Hershey himself as well as from that of A. F. Lieurance personally that a good competent bookkeeper was employed and paid to keep and did keep the books for A. F. Lieurance as Receiver at and in the office established by him from the middle of June until the month of December, 1926, or, in other words during the entire time that the business was operated by the Receiver after the first ten days, and that Mr. Hershey was engaged during a period of from five to ten days only in formulating a set of books to be used by the Receiver at his Oakland office, and he testified under cross-examination that he could not state what work, if any, was done by him after those ten days that a competent bookkeeper would not be able to do under the circumstances (Reporter's Transcript, p. 60); and that the only class of entries which he was able

to specify regarding which a competent bookkeeper might need instructions or assistance from an expert accountant were those relating to transfers of merchandise from one of the sixteen stores to some other one or more thereof and which transactions did not involve the payment of any money from one store to the other (Reporter's Transcript, p. 61); and that he had quite a number of other clients, but their affairs were attended to by him during that period; and for the reason that a large part of Mr. Hershey's services consisted of work which could have been done just as well by the competent [186] bookkeeper who was employed by the Receiver during that time at a salary of only $27.50 per week, such as computing the amount of the dividend checks upon the payment of a 10% dividend to creditors and again upon the payment of a 40% dividend to creditors, and in preparing such checks and after they were prepared, by checking the total to see that the total number of checks agreed with the 10% or the 40% respectively of the total amount of the claims filed, as he testified he did (Reporter's Transcript, p. 50); and also such work as checking the daily reports of cash receipts from sales which were made to the Receiver by each store as he testified he did personally every day, instead of permitting the competent bookkeeper to do so, who was employed by the Receiver as aforesaid (Reporter's Transcript, p. 55); and for the reason that Mr. Hershey testified under cross-examination that there is a radical difference between the class of work which requires an accountant and the class

of work which requires merely a competent bookkeeper and that he personally did not employ any accountants regularly in his office but "only from time to time as the occasion arises because accountants are high-priced men to employ and we do not care to have them around when they are not working"; and for the further reason that Mr. Hershey testified that he could not state what portion of his time during the period of his employment was given exclusively to the receivership business (Reporter's Transcript, p. 61); and for the further reason that a very substantial part of the services which were performed by Mr. Hershey as accountant was that of attempting to check the creditor's claims which had been filed with the Receivers with the books of Pilcher & Co., Inc., and entries in which books had not been made after February 28, 1926, and that in doing this work, he "worked with a firm of accountants who were employed by the Receiver there" i. e. in New York City (Reporter's Transcript, p. 41); and meaning thereby the accounting firm of S. D. Laidesdorf & Co., and that this work was done by Mr. Hershey according to his own testimony "in conjunction with the [187] accounting firm in New York" (Reporter's Transcript, p. 46) and because that firm has already been allowed by the New York Court and has been paid by the Receiver Gotthold for the same work, in part, the sum of $7,700.00 as accountants for the Receivers and the trip of Mr. Hershey to New York for the performance of this work consumed 38 days of his time and was wholly

unnecessary; and the amount of $10,000.00 which has been paid to him by A. F. Lieurance as Receiver is, for the foregoing reasons, exorbitant and excessive; and that the services performed by Mr. Hershey which are set forth in the supplemental account of the Receiver and for payment for which the Master has recommended the allowance and payment of the said $750.00 were not such as required an expert accountant to perform and hence are excessive and exorbitant.

That the oral and documentary evidence upon which this exception is based is the same as that hereinabove enumerated under the preceding exceptions.

FRANCIS J. HENEY,
GRANT H. WREN,
C. A. SHUEY,

Attorneys for Walton N. Moore Dry Goods Co., and Other Objecting Creditors. [188]

[Title of Court and Cause.]

AFFIDAVIT OF GRANT H. WREN.

United States of America,
Northern District of California,
City and County of San Francisco,—ss.

Grant H. Wren, being first duly sworn deposes and says: That he is associated with counsel for the objecting creditors herein; that in this capacity he has been in constant communication with Messrs. McManus, Ernst & Ernst, the attorneys for A. F.

Gotthold, one of the Receivers in the above-entitled proceeding, in New York, and that on or about the 27th day of January, 1928, affiant received from said McManus, Ernst & Ernst, attorneys for said Receiver a telegram, a portion of which reads as follows

> "Three claims aggregating $10,000.00 now pending here before District Court and dividends therefore, must be set aside. Has Lieurance done so Stop Expenses have been incurred here for Master hearing disputed claims and premiums bonds of both Receivers Stop."

That on or about the 8th day of February, 1928, affiant received through the United States mails from said McManus, Ernst & Ernst, attorneys for said Receiver, a letter enclosing copy of [189] communication written by said McManus, Ernst & Ernst, to Mr. William Fraser, Chairman of the Eastern Creditors' Committee, a portion of which letter reads as follows:

> "Another very vital question arises and that is this: there are still approximately $10,000 of claims in litigation for which dividends must be reserved in the event that the Court directs that the claims be good; there are the fees of Mr. Cardozo as Master, and there is a substantial balance due to Mr. Gotthold for moneys which he has personally expended and which I understand to be approximately $1250.
>
> "I do not wish to undertake to fix the fees of Mr. Cardozo as Special Master, but I know that he has done a considerable amount of work, has

decided approximately twenty-five claims, and I think the Court would allow him in the neighborhood of $2500."

GRANT H. WREN.

Subscribed and sworn to before me this 25th day of February, 1928.

[Seal] C. J. DORAN,

Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed]: Filed Feb. 25, 1928. [190]

[Title of Court and Cause.]

MEMORANDUM FOR ORDER CONFIRMING SPECIAL MASTER'S REPORT WITH CONDITION.

ST. SURE, D. J.—With the understanding that Receiver Lieurance and his attorney, Edward R. Eliassen undertake to pay an apparent deficit for expenses of administration incurred at New York, and estimated at $1,700, the exceptions to the report of the Special Master are overruled and the report is confirmed.

March 26, 1928.

[Endorsed]: March 26, 1928. [191]

[Title of Court and Cause.]

ORDER APPROVING AND CONFIRMING REPORT OF H. M. WRIGHT, AS SPECIAL MASTER; FIXING COMPENSATION OF RECEIVER, A. F. LIEURANCE, AND EDWARD R. ELIASSEN, ATTORNEY FOR RECEIVERS, ETC.

The Receivers of the defendant Company having filed in the above-entitled proceeding in the above-entitled court their final account and report of their administration, together with a petition for the fixation of fees and compensation of Receiver A. F. Lieurance and of Edward R. Eliassen, attorney for the Receivers; and similar accounts and reports and petitions having been filed on behalf of the said Receivers in proceedings entitled as above in the United States District Court in and for the District of Oregon (Proceeding No. E.–8846); in the United States District Court in and for the Eastern District of Washington (Proceeding No. E.–4293); and in the United States District Court in and for the Western District of Washington (Proceeding No. E.–540); and,

It appearing that certain creditors of the said defendant Company filed certain objections in each of the said proceedings and in each of the said courts to the said accounts and reports and petitions and that the matter of the hearing on the said accounts and reports and petitions and on the ob-

jections thereto for all said jurisdictions shall be heard and determined by the United States District Court in and for the Northern District of California in the above-entitled proceeding; and, [192]

Hon. H. M. Wright having been appointed by the above-entitled court as Special Master for the purpose of hearing and reporting and finding upon the accounts and reports and petitions of the Receivers in the said proceedings in said jurisdictions, and the objections and exceptions thereto; and,

It appearing that during the hearing before the said Special Master there was filed on behalf of the Receivers a supplemental report and account, which by stipulation of counsel was submitted to be considered within the matters therein referred to; and,

Said Special Master having made and filed and submitted to this Court his report and findings in the premises; and,

Francis J. Heney, Esq., Grant H. Wren, Esq., and C. A. Shuey, Esq., having filed on behalf of certain creditors of the R. A. Pilcher Co., Inc., written objections to the said report and findings of the Special Master; and,

The said matter coming on regularly for hearing on the objections and exceptions to said report and findings, Francis J. Heney, Esq., Grant H. Wren, Esq., and C. A. Shuey, Esq., appearing as attorneys for the objectors, and Edward R. Eliassen, Esq., and Peter J. Crosby, Esq., appearing as attorneys for the Receiver A. F. Lieurance; and the matters in the premises having been duly considered by the

Court and having been submitted to the Court for decision; and good cause appearing therefor;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the objections and exceptions to the said report and findings of the Special Master be, and they are, hereby overruled. [193]

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the report and findings of the Special Master, dated January 19th, 1928, in the premises, be and it is hereby approved, ratified and confirmed.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

(1) That the final accounts and reports of the Receivers be, and they are, hereby approved, ratified and confirmed as rendered.

(2) That the supplemental account and report filed herein on behalf of the Receivers be, and it is, hereby approved, ratified and confirmed.

(3) That the sum of Thirty Thousand Dollars ($30,000) be, and it is, hereby fixed as the compensation to be paid to Edward R. Eliassen, attorney for the Receivers, in full for his services rendered in the above-entitled matter in the above-entitled Court and in the jurisdictions of Oregon and Washington hereinabove mentioned; that the said Edward R. Eliassen has already received Fifteen Thousand Dollars ($15,000) on account of such services and that the Receiver A. F. Lieurance be, and he is, hereby authorized and directed to forthwith pay to the said Edward R. Eliassen the balance of

Fifteen Thousand Dollars ($15,000) in full for all services rendered as attorney for the Receivers.

(4) That the sum of Thirty-five Thousand Dollars ($35,000) be, and it is, hereby fixed as the compensation of A. F. Lieurance, as Receiver in the above-entitled proceeding in the above-entitled court and in the Courts in the aforesaid jurisdictions of the States of Oregon and Washington; that he has already been paid Fifteen Thousand Dollars ($15,000) on account and that he is hereby authorized and [194] directed to pay to himself forthwith the balance of Twenty Thousand Dollars ($20,000) in full for all services rendered by him as Receiver in the premises.

(5) That Phillip A. Hershey, accountant for the Receivers, be paid the further sum of Seven Hundred and Sixty-nine and 71/100 Dollars ($769.71) in full for his services, and the said Receiver A. F. Lieurance is hereby ordered and directed to pay said sum forthwith to the said Philip A. Hershey in the premises.

(6) That the said Receiver A. F. Lieurance submit to the above-entitled court a final supplemental account of his receipts and disbursements and pay any balance in his hands, together with the sum of Seventeen Hundred Dollars ($1,700) (which said Receiver and his attorney are informed is the apparent deficit for expenses of administration incurred at New York and which said sum they have agreed to pay out of their allowances) to Receiver Arthur F. Gotthold, at New York, and immediately thereafter be discharged.

Dated, this 27th day of March, 1928.

A. F. ST. SURE,
U. S. District Judge.

[Endorsed]: Filed Mar. 27, 1928. [195]

[Title of Court and Cause.]

SUPPLEMENTAL AND FINAL ACCOUNT OF MONEYS RECEIVED AND DISBURSED BY RECEIVERS SINCE FILING OF SUPPLEMENTAL ACCOUNT.

	RECEIPTS	Voucher No.	Amount
1927	Cash on Hand at time of filing Supplemental Account		$38,694.76
Oct. 29	Received from First National Bank Interest 9/28/27 to 10/28/27		63.47
Nov. 28	Same as above, 10/28/27 to 11/28/27		65.63
Dec. 28	Same as above, 11/28/27 to 12/28/27		63.51
1928			
Jan. 28	Same as above, 12/28/27 to 1/28/28		64.54
Feb. 28	Same as above, 1/28/28 to 2/28/28		65.22
Mar. 28	Same as above, 2/28/28 to 3/28/28		50.63
	TOTAL RECEIPTS.....		$39,067.76

Mar. 30	Voluntary Contribution of A. F. Lieurance and Edward R. Eliassen for which any claim is hereby waived.....	1,700.00

TOTAL RECEIPTS AND CONTRIBUTION $40,767.76

1927	Disbursements	Voucher No.	Amount
Nov. 2	Central Savings Bank rent	822	$ 90.50
2	Pacific Telephone & Telegraph Co. Telephone service	823	8.71
2	Phillip A. Hershey & Co. Notary fees advanced ..	824	.50
2	Western Union, telegrams	825	1.33
15	Smith Bros., stationery...	826	6.55
30	Globe Indemnity Co., premium on bond	827	400.00
1928			
Mar. 6	Ermah Lanier, stenographer	828	98.65
27	A. F. Lieurance, Receiver's fees paid pursuant to Order	829	20,000.00
27	Edward R. Eliassen, attorney's fees paid pursuant to Order	830	15,000.00

Feb. 24	Judge H. M. Wright, master's fees paid pursuant to Order 831	1,500.00
Mar. 27	Phillip A. Hershey & Co. Accountants paid pursuant to order 832	769.71
	[196]	
Mar. 6	Peter J. Crosby, cash advanced for stenographic work 833	17.00
28	Postmaster Oakland, postage 834	22.64
28	Margaret Mc Pherson, Stenographer 835	44.00
30	Edward R. Eliassen cash advanced for copies of Orders 836	16.00
30	A. F. Lieurance, miscellaneous expenses.....837	31.32
30	Balance remitted to Arthur F. Gotthold, Co-Receiver, New York....838	2,760.85
	TOTAL DISBURSEMENTS $40,767.76	

RECAPITULATION

Balance on hand at time of filing Supplemental Account	$38,694.76
Total Receipts and Contributions Since Filing Account	2,073.00
Total Receipts and Contributions	$40,767.76
Total Disbursements	40,767.76
Balance on Hand	NONE

ARTHUR F. GOTTHOLD and
A. F. LIEURANCE,
Receivers.
By A. F. LIEURANCE,
Co-Receiver. [197]

State of California,
County of Alameda,

A. F. Lieurance, being first duly sworn, deposes and says:

I am one of the Receivers of the R. A. Pilcher Co., Inc., the defendant above named;

The foregoing account being filed as and for a final supplemental account of my administration of the said R. A. Pilcher Co., Inc., is in all respects just and true and according to the best of my knowledge, information and belief, contains a full, true and particular account of all my receipts and disbursements on account of said estate of the R. A. Pilcher Co., Inc., from the time of the filing of the Final Account of Receivers to date; that all items of disbursement were paid in good faith and for

the best interests of the estate and were legal charges against said estate, and that I do not know of any error or omission in said account to the prejudice of any person interested in said estate.

A. F. LIEURANCE.

Subscribed and sworn to before me this 3d day of April, 1928.

[Seal] EDWARD R. ELIASSEN,

Notary Public in and for the County of Alameda, State of California.

[Endorsed] Filed April 5, 1928. [198]

[Title of Court and Cause.]

STATEMENT OF THE EVIDENCE.

Introduced upon the trial of the issues raised by objections and exceptions to final report and final account of the Receivers, and to the allowance of further fees to Receiver Lieurance and Attorney Eliassen.

Proposed by objecting creditors (appellants).

(Upon the trial of the issues above mentioned, A. F. Lieurance, Receiver, and Edward R. Eliassen, Attorney for the Receivers, were treated and mentioned as plaintiffs; the parties who interposed the objections and exceptions were treated and mentioned as "objecting creditors.")

The original hearing was before Hon. H. M. Wright, Special Master in Chancery, to whom the matter was referred, with directions to take testi-

mony and report findings and conclusions thereon. Counsel appearing:

For Plaintiffs: Peter J. Crosby, Esq., Edward R. Eliassen, Esq.

For Objecting Creditors: Francis J. Heney, Esq., C. A. Shuey, Esq., Grant H. Wren Esq. [199]

Mr. ELIASSEN.—For the purpose of this hearing, which is a hearing, as your Honor knows, upon a final account of the receivers and their report, and the petition for a settlement, and for fees, and the objections made by certain creditors to the account and to the report, and to the allowance of fees to the receivers and attorney in the matter, I have, for the purpose of presenting it, associated Mr. Peter J. Crosby, of Oakland; I would like to have the record show that.

The MASTER.—Very well.

Gentlemen, I have taken advantage of the courtesy of counsel in sending me copies of certain of the documents to examine rather cursorily, the petition for allowance of fees to the Receiver and to the attorney, for the exceptions and objections to the final account and report by the creditors, and the exceptions and objections to the petition for fees and compensation to the Receiver and his attorney. I think counsel will agree with me that on this hearing there are a great many issues presented by these documents which are no longer of interest. The correspondence with Creditors' Committees and meetings, etc. do not seem to me to have any importance at this point. What we

have got to do now is to pass upon the report of the Receivers, the final account of the Receivers, and in that respect, as I gather, the chief, and perhaps the only, issue is as to certain auditor's allowances to the firm of Hershey & Co. Counsel will, of course, correct me if I am wrong.

Mr. CROSBY.—That seems to be the purport of the pleading, your Honor.

The MASTER.—Then the next matter is to receive evidence and determine what should be the proper fees to the Receivers now and the fees to the Receivers' attorney or attorneys. I gather from this that the decision of the court on this reference is to be accepted by the courts of the other Western jurisdictions [200] under stipulation and order: Is that right?

Mr. CROSBY.—That is our understanding.

The MASTER.—In the matter of determining fees, I notice in the former order, which was apparently set aside, there was a segregation as between the different jurisdictions. Is that segregation of whatever fees are determined to be followed here in this litigation?

Mr. CROSBY.—That is not our understanding. Our understanding was that it was to be a general allowance for them all.

Mr. HENEY.—Yes. I cannot see any object to be gained by making any severance, because the account has already been rendered and the creditors have all been paid an equal amount *pro rata* on their claims.

The MASTER.—I have also looked through the report since I have been sitting here. I have not read it through. In the prayer the Receiver asked for an order barring claims. I suppose that matter will be referred to me under the order. You may proceed.

Mr. CROSBY.—May it please your Honor, with your Honor's permission and that of counsel, I think perhaps it may be proper at this juncture to make some suggestion as to our course of procedure here; expert witnesses will perhaps be called in here, and we thought that if we presented the account first, and the challenge that is made against the specific items in the account, and that is disposed of, then we proceed with our evidence relating to the services, for the purpose of laying a foundation f*o*ur our questions to experts in reference to fees; if that meets with your Honor's approval, and with counsel's, we would proceed along that line.

The MASTER.—Yes, I think so. Prove your report and your account first. [201]

EVIDENCE INTRODUCED BY THE PLAINTIFFS.

TESTIMONY OF A. F. LIEURANCE, FOR PLAINTIFFS.

A. F. LIEURANCE, called and sworn as a witness for the plaintiffs, testified in substance as follows:

Direct Examination by PETER J. CROSBY.

I am one of the duly and regularly appointed receivers in the matter in which this heaing is being held, and being designated as "In Equity—No. 1707." I am Co-receiver with Arthur F. Gotthold, who resides in New York City. This receivership had its inception in New York City.

I have filed here, on behalf of the Receivers, our final account as such Receivers, together with a report of both Receivers, accompanying that account. I understand that certain objections and exceptions to the account have been filed, and our answer to those objections and exceptions has been filed.

The account presented to me, marked "Filed May 19, 1927," is the final acount of the Receivers in this matter; and the document presented to me and marked "Filed May 19, 1927," is the Receivers' report accompanying that account. Items appearing on pages 601 to 605 inclusive, of the final account, purporting to set forth receipts of the New York Receiver and disbursements by the New York Receiver in this matter, is supplemental to our final

(Testimony of A. F. Lieurance.)

account in the western jurisdiction, by which I mean the eastern and western districts of Washington respectively, the district of Oregon, and the northern district of California.

As to the receipts and disbursements in New York, those are based upon the information I have received from my Co-receiver; and there is an additional list, of further disbursements, which list was received by me from Mr. Gotthold, my Co-receiver, after the final account was made up and filed. I have that with me. (Thereupon the witness produced a letter dated May 11, 1927, entitled "Re R. A. Pilcher Co.," and purporting to be a letter from Arthur F. Gotthold, Co-receiver, addressed to the witness, and which was accompanied by letter dated May 11, 1927, addressed to the [202] witness by Messrs. McManus, Ernst & Ernst, and a document purporting to be an order of court signed by Augustus N. Hand.)

I received all of those through the mail, from Mr. Gotthold. McManus, Ernst & Ernst were the New York attorneys for the Receivers. I also received, in the course of the mail, a letter addressed to me by Arthur F. Gotthold, dated May 27, 1927, entitled "Re R. A. Pilcher Co.," which is now shown to me.

(The letter dated May 11, 1927, together with the purported order of the Court, and with the letter of May 27, 1927, above mentioned, were collectively introduced in evidence as one exhibit, without objection, and were marked as Receiver's Exhibit 1.)

This final account which I have filed here shows

(Testimony of A. F. Lieurance.)

all moneys received by me and disbursed by me, as Receiver, in this matter, in the western jurisdictions; and this account, together with the supplement filed this morning, gives the receipts and disbursements by my Co-receiver in New York, in the New York jurisdiction, according to the reports and information furnished to me by him.

(In answer to an inquiry by the Master, the attorney for the plaintiffs stated that the New York accounts were not involved in the present hearing; and that the supplements pertaining to the disbursements and receipts in the east were offered in evidence for the reason that the final account made reference to some disbursements and receipts in the east, and therefore these supplements were introduced in evidence to "round out that situation"; but that he did not think that it was the purpose of the Court here to pass upon the matters in the east.

Thereupon, it was stipulated by both parties, through their respective counsel, that the matter of the fixation of fees in the western jurisdictions has to do only with the Receiver here and his attorney here; in other words, that whatever allowances are made in the western jurisdictions for fees and compensation, go to the Receiver in the western jurisdictions, and his attorney in the [203] western jurisdictions; whereas, the allowances made in the east go to the attorney for the Receiver there, and the Receiver there.)

(Testimony of A. F. Lieurance.)

(The witness continued.) There is a stipulation between the two Receivers, and which is in writing in the form of telegrams and letters, to the effect that I am to have all of the fees out here, and that Mr. Gotthold is to have all of the fees back there.

I sent $25,000.00 from the money I collected here back to my Co-receiver in New York; this was at the request of the Co-receiver and his attorney; there was no money, apparently, to take care of their expenses,—they said.

The report accompanying my final account reflects the facts in this matter as they are set forth therein.

I have filed herein my petition for the approval of this account, together with my application for fees for myself and for my attorney, Mr. Eliassen. All of the facts stated in that petition are true.

In the objections and exceptions filed here, request has been made for the production by me of certain documents and books of account. I have brought with me to this court my books of account, and my correspondence. The claims that were filed in this matter are filed with the account; and the correspondence in reference thereto were filed with the claims. The documents indicating transactions in all of the conduct of this business are here; Mr. Hershey, who was my accountant, and who kept the books of account in this matter, and carried on correspondence under my supervision, has likewise produced his records of all of these trans-

(Testimony of A. F. Lieurance.)

actions and proceedings; and they are here now ready for inspection by counsel.

Cross-examination by FRANCIS J. HENEY.

The attention of the witness was directed to certain items appearing on pages 595 and 599 of the account, reading, "Southern Pacific Travel Expense," such items aggregating the sum of $776.93; and the account does not show who used the transportation. The [204] witness stated that there were records available which would supply the information requested.

In my report, at the bottom of page 5, there is a statement to the effect that I met Mr. J. C. Brownstone of New York, the largest stockholder of the defendant corporation, in Yellowstone National Park, Wyoming, previous to August 5, 1926, for the purpose of discussing the refinancing of the business. I recall that trip. I made the trip up there for the sole purpose of seeing Mr. Brownstone at his request. On page 591 of the account, there are two items in favor of A. F. Lieurance for "Cash Advanced for Trip" $28.60 and $806.68, a total of $835.28. Those items of expense included all of the expenses for visiting all of the stores; and the trip to Yellowstone was made in the same trip; and that particular time, I spent upwards of two weeks visiting and checking up the various stores and that was the expense in connection with all of it.

At the time I first employed Hershey & Co., I

(Testimony of A. F. Lieurance.)

talked with Mr. Hershey about the employment. I had been appointed Receiver, and I informed Mr. Hershey of that fact, and it naturally followed that there would be some accounting to do; we did not know at the time the extent of that accounting, and I made not exactly an arrangement, but I told Mr. Hershey we would have to have an accountant; that was about the size of it; and he asked for the work; and as the receivership progressed a little bit, his engagement became actual and permanent.

At that first talk, nothing was said by either myself or Mr. Hershey about the amount of his compensation, because we knew nothing about the extent of the work that would be done, or the receivership; and it was some day or two after the first talk before there was anything said about a fee, and then the talk, in substance, was that we did not know what the value of the service or the amount of the work would be, and there was no value that [205] could be fixed on the services; and Mr. Hershey said he would have to have a drawing account because he had office expenses, and had his help to pay, and so on; that constituted the conversation, or the substance of the conversation, at that time. The amount that his drawing account should be, was not discussed at that time. Asked whether there was any "discussion at that time with regard to his standard of charges, or what he would charge," the witness answered: No one knew what the extent of the work would be, and there had not been any work of consequence done up until three

(Testimony of A. F. Lieurance.)

or four days past. After that we did discuss the amount to be paid. That was probably three, or four, or five days, probably five days after we learned something about the receivership.

The talk on that occasion was not definite; the amount was not definitely fixed then, but he would have to have a drawing account; there was no way to fix the amount. I cannot recall just exactly what was said at that time. He would do the work, and whatever was right and fair would be agreeable; that was substantially the talk at that time.

I had conducted a chain of stores prior to that time, and had a pretty fair idea of the character of the bookkeeping work that would have to be done so far as the stores were concerned. I had employed bookkeepers for that purpose, when I was running the stores myself.

Q. At that particular time that you had this talk with Mr. Hershey, was it not the understanding that the committee which had been selected was going to attempt to run these stores for a while, and give Mr. Pilcher an opportunity to raise money from his stockholders to take up the indebtedness and continue business?

A. I was informed that there was some such arrangement in New York. However, just when I received that information I don't know. I do not think it was that early in the receivership.

I did not take the receivership at the request of Mr. Pilcher [206] personally. Mr. Pilcher had been employed by me when I was running a chain

(Testimony of A. F. Lieurance.)

of stores; Mr. Pilcher and I had been associated together in another business,—in the same line of business.

I let Mr. Hershey go ahead with his work, with no understanding between us as to what his compensation would be, until Mr. Walter Ernst came out from New York, and Mr. Ernst asked me how much I would have to pay Mr. Hershey, and I told him I did not know; and then I had a talk with Mr. Hershey about how much he would have to have on account, and he told me he would have to have from $250 to $300 a month, and that month we paid him $250 and he said that was not sufficient to take care of his bills, etc., and I paid him $300 a month, and also paid him $50 back pay for the first month.

Mr. Ernst arrived here about June 30. The $250 paid to Mr. Hershey was not for the month of May. I don't remember when the payment was made but it was made some time afterwards. I could not tell you, without looking it up, whether it was after I had the talk with Mr. Ernst; it will show on the record. After I had this talk with Mr. Hershey, in which he said he would have to have $300 a month, Mr. Ernst asked me about it and I told him Mr. Hershey would have to have a drawing account of $300 a month. There was no further talk between myself and Mr. Ernst about it; he said that was fair enough or something to that effect and the subject was dropped then.

My first conversation with Mr. Hershey in regard to the work for which he was paid $5,900, was about

(Testimony of A. F. Lieurance.)

the time he presented his bill; the date will show on the account, the date it was paid. (The attention of the witness was then directed to the fact that the account showed that the item was paid on December 31, 1926, and the witness answered:) No, there was some talk before that. Mr. Hershey said that he was going to present a bill for his services, and later on he did present it. [207]

I did not have a bookkeeper in each one of these fourteen stores. Accounts were not kept at each one of the stores, excepting that a cashier made daily operating reports to the Oakland office. The only bookkeepers at the Oakland office during the period of the operation of the stores consisted of Mr. Hershey and his assistants. Part of the books were kept in my office, and part of them in Mr. Hershey's office. Our office space was a little cramped, but both offices were in the same building. I do not know how many people Mr. Hershey had at work on the books.

Q. How many bookkeepers did it require to keep the accounts during the operation of the stores?

A. Well, I know that Mr. Hershey had two assistants most of the time. I could not state just how many. I do not know how many bookkeepers it took to keep the books. I know the books were well kept and the information that I wanted daily was provided.

By that I mean that the books were kept in such a shape that any day I knew where I stood by looking at the books. That was my practice when I

(Testimony of A. F. Lieurance.)

was running the chain stores of my own. At that time I had 600 stores.

Q. It is difficult to compare the bookkeeping work of them with these, isn't it?

A. Yes. If you were going to compare the pay of the man keeping the books for 600 stores, you would not object to this account.

Q. I understand there would be some difference. From your experience, what would you say was a fair wage for keeping these books?

A. Mr. Heney, it was not exactly a bookkeeper's job. The accounts would have to be audited, and Mr. Hershey did all of that work and kept the books besides, and did an excellent job, and gave the time that was necessary to keep the books in proper order. So it was not a bookkeeper's job.

Q. A bookkeeper does not have much to do to audit his own books, does he?

A. Anybody can write, but it really takes a pretty [208] good head to tell what to write and where to write, etc.

Q. But any bookkeeper ought to have been able ot run these books, shouldn't he?

A. No, I doubt that—I guess a bookkeeper would, yes.

Q. From your experience, what would you say was a fair wage for a good bookkeeper or an accountant to keep these books?

A. Well, there is a difference between bookkeepers and accountants. You can hire bookkeepers for most any price, but I think when you employ

(Testimony of A. F. Lieurance.)

accountants that do the bookkeeping and accounting work, too, that is a different situation.

Q. In that particular period up to the time you sold out these stores, what necessity was there for having an accountant, as distinguished from a bookkeeper?

A. The work of chain store accounting is complicated.

Q. If you have your daily reports from your stores, what difference does it make whether it all came out of one store, or came from fourteen different stores?

A. There were four different court jurisdictions, for one thing, and there were sixteen stores, and there was interchange of merchandise, and there was everything to complicate the work.

I conducted a business in New York City at one time. I am familiar to some extent with the prices charged by accountants in New York City as compared with those out here in San Francisco. For the same class of men the prices run pretty much the same. I think that the *per diem* charge of a public accountant firm, in New York City, would depend upon the firm, and the nature of the work. I have an idea of what it is in San Francisco, after talking with some men who are in that business, —about five, or six, or seven, or eight dollars an hour, depending upon the nature of the work, and who does it.

Q. Isn't it $25 a day with all of these public accountant firms?

(Testimony of A. F. Lieurance.)

A. That was not the information I received. Before I [209] paid this amount to Mr. Hershey I took the pains to look into the matter through one of the large accounting firms here.

Q. Which ones did you inquire of?

A. Mr. Lilly, of McLaren, Goode, & Co.

Q. Any others?

A. No, just the one at that time.

Q. Can you tell the conversation, the talk that you had with Mr. Hershey at the time this amount of $5,900 additional money was agreed upon?

A. Mr. Hershey felt that he was entitled to payment for his services, and the allowance had been made to the Receivers and the attorneys, and it was quite evident that Mr. Hershey was entitled also to his payment, and he said he was going to present his bill, and it would be $5,900, and I gave it consideration and, in proper time, paid it; I was satisfied in my own mind that it was a reasonable charge, very reasonable for the work done, and I confirmed that by communicating with Mr. Lilly, of McLaren, Goode & Co.

Q. So that you did not have any discussion with him other than what you stated in regard to the $5,900? A. Nothing that I recall.

Q. He did not explain to you how he reached the figure of $5,900?

A. I couldn't state definitely the conversation. There has been some conversation about hours, and the basis of the charge, but I do not recall that sufficiently to give any accurate testimony on it.

(Testimony of A. F. Lieurance.)

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(Testimony of A. F. Lieurance.)

I sent Mr. Hershey for the purpose of straightening it out, and he collected $600 that was being carried as an I. O. U. in the till by the manager, and that straightened up the affairs of the store; he also went to Bremerton, Washington, where there was a discrepancy, and reported the condition to me, and straightened that out.

While Mr. Hershey was gone on that trip, I was kept in touch with him as to the discoveries that he was making; and as a result of those discoveries, I instructed him exactly what to do. There were some employees discharged; the manager at Portland was changed.

Q. Now, from your experience in matters of this kind, and your knowledge of the services rendered by Mr. Hershey, state whether or not the sum that you have paid him in the aggregate for his services rendered is reasonable?

A. In my judgment, it is nominal.

(In answer to a question by the Master:) The period of Mr. Hershey's employment was from June 3 up to,—the active management was up to about April, some time in April, when the last dividend was paid,—on up until the books were closed.

Redirect Examination Resumed by Mr. CROSBY.

Q. State whether or not Mr. Hershey kept a separate set of books for each separate jurisdiction?

A. He kept a separate book for each individual store, which had to be done, because merchandise was being transferred. We found in some locali-

(Testimony of A. F. Lieurance.)

ties that merchandise contained in the stores was not adapted to that particular locality, and they could not dispose of it at any price, but we could dispose of that merchandise in some other locality to advantage, and that [212] merchandise was transferred, and the stores were operated to the very best advantage; and that necessitated the keeping of individual books and that resulted in jurisdictions being kept separately.

There were three stores in the California jurisdiction; six in the Oregon jurisdiction; and seven in the Washington jurisdiction.

Recross-examination by Mr. HENEY.

The stores in the western district of Washington were sold October 30, 1926. The stores in the eastern district of Washington were sold about the same time; they were all sold about the same time, as rapidly as we could make the circle around. We advertised for bids, and made a strenuous effort to get bids; and all of the stores were sold on private bids. The Oregon stores were sold about the same time.

The California stores were sold first, about the 23d or 25th of October; and then immediately we proceeded right on up; and the stores up north were sold October 30th.

Since about November 3, 1926, there has been no store operated at all.

Q. So that the bookkeeping was reduced to the proposition of merely looking after the payment of dividends, etc.?

(Testimony of A. F. Lieurance.)

A. Well, after that the bookkeeping in connection with the administration was handled after the stores were sold, that is, the payment of dividends, and the auditing of the claims, and the auditing of the books of account, and the checking up with the claims—that was all done after the stores had been sold.

This trip to New York was made after the stores were sold, I think in November and December. That trip was for the purpose of going over the books of the company and bringing the accounts up to date, and checking them up with the claims, and doing whatever was necessary to get the accounts reconciled with the claims, and know where we stood. I had never been able to get that information from [213] New York. I had repeatedly tried and they told me it was not ready.

Prior to that time, there were some claims that had been contested. The most of the claims were contested, if I remember correctly, after the accounts were audited, which was after the sale of the stores. There had been quite a lot of litigation previous to that by some who had filed claims, and filed suits, and threatened suits; there were any number of threats. That was not all in New York; there was quite a lot of it out here on the coast; there was some in New York, too.

Q. Mr. Hershey, in the trip up north, at the time that he got that $600, that was a matter that he was acting as a sort of Receiver, was it not, more than an accountant? A. No, I do not think so.

(Testimony of A. F. Lieurance.)

Q. Did he change the manager up there at Portland?

A. He went up there to check up the accounts, or to check up the store and the cash and make an investigation of the conditions.

Q. Who selected the new manager?

A. That might be difficult to define; I had seen the man in the store; I was not particularly acquainted with any of them, but I was very favorably impressed with that man when I saw them, and Mr. Hershey recommended that in his opinion, he knew this chap, he felt this chap was all right, and I instructed him to appoint him manager. So, to say that I selected him might be not entirely correct.

Q. You jointly selected him?

A. Yes, you can call it that, if you like. [214]

Mr. CROSBY.—Your Honor, on the question of the payment of $5,900, we are in this position: We have gentlemen here, members of the Bar, whom we expect to call on the matter of these fees, but I assume that it would be proper for us to introduce some evidence concerning the reasonableness of Mr. Hershey's charge. This charge is attacked from two standpoints, one as appears in their objections and exceptions, that by reason of an alleged original contract between the Receiver and Mr. Hershey, that Mr. Hershey's charge should be limited to $300 a month; secondly, that the charge is unreasonable. Now, we have Mr. Hershey present, and we

have men competent to testify in regard to the value of his services, which would take us at least the rest of the morning—I see it is twenty minutes after eleven now—there is one further point, Mr. Heney, with your permission, in order, perhaps, to hurry the matter along, Mr. Eliassen has here a transcript practically of his office records of his services in this case; he has it in such a form that he can hand one to your Honor and one perhaps to counsel and in lieu of putting on the oral testimony and reading it all into the record for the purpose of formulating a hypothetical question, if counsel would consent that we thus save time by tendering that transcript, it would save us a great deal of time. Would you do that, Mr. Heney?

Mr. HENEY.—I am always willing to save time. I am perfectly willing to do that.

Mr. CROSBY.—Thank you very much.

The next proposition is that from the standpoint of Mr. Lieurance, one of the Receivers here, the question of whose fees is before your Honor, he has likewise reduced to writing a history of his services in this matter. There will be no experts called in support of his charge. We would gladly tender to counsel also that statement if you would be content to receive it, and that, [215] perhaps, would save us going through in detail the various matters. He could be cross-examined upon them, no question about that.

Mr. HENEY.—The question is, without knowing anything what is in it, I feel a little bit reluc-

(Testimony of A. F. Lieurance.)

tant to do so. As an attorney, I am familiar enough with the nature of that business, myself, and would feel competent to cross-examine upon that without looking at the report, but the other I would have to give some attention to.

The MASTER.—The cross-examination can be deferred as long as you like, Mr. Heney. I do not see how you could cross-examine on a document handed to you without examining it at your leisure.

Mr. HENEY.—Yes, your Honor.

The MASTER.—Have you seen this document of Mr. Eliassen?

Mr. CROSBY.—We have several, and we will turn one right over to Mr. Heney, and will hand one to your Honor.

The MASTER.—Is this statement of services of Mr. Eliassen to be taken as an exhibit now, Mr. Heney? Do you want it formally proved by Mr. Eliassen?

Mr. HENEY.—Not if he says it is correct.

Mr. CROSBY.—There are just one or two pages that need to be added to it. I will not offer this until we come to that phase of the case.

Redirect Examination by Mr. CROSBY.

A general statement, in writing, by A. F. Lieurance, purporting to state in detail the services rendered by him as Receiver, was offered by the plaintiffs and received in evidence, without objection, with the same effect as oral testimony, and subject to the right of cross-examination, concerning the

(Testimony of Phillip A. Hershey.)

matters contained therein; and such statement was identified as Receiver's Exhibit 3. (See Transcript, pp. 26, 27, 86.) [216]

TESTIMONY OF PHILLIP A. HERSHEY, FOR PLAINTIFFS.

PHILLIP A. HERSHEY, called and sworn as a witness, for the plaintiff, testified, in substance, as follows:

Direct Examination by Mr. CROSBY.

My business is that of a public accountant and auditor. I have been engaged in that business for the past five years, with office at 1401 Central Bank Bldg., Oakland, California. I am acquainted with Mr. Lieurance, one of the Receivers in this matter. I have been in his employ while he has been Receiver, in connection with the R. A. Pilcher Co. receivership. I entered that employ about June 3, 1926.

As I entered upon the work connected with that employment, I did such things as were necessary to secure to the Receiver information relative to the assets of the company, those assets being scattered over three western states. I did work as it was required, at the moment that it arose. There was no going accounting system, and it was necessary that one be installed.

Q. Now, what books, if any, did you open in reference to this business, and for the purpose of conducting the accounting phase of it?

(Testimony of Phillip A. Hershey.)

A. I opened journals, in which were recorded the sales of stores, the cash that was received, the checks that were drawn, the bank deposits that were made, the petty cash expenditures, the merchandise purchases, the merchandise transfers, and a general journal for the entry of such items as would not appear in the previous journal; also set up a general ledger for each of the stores; also set up a set of books for the offices of the Receiver, those books consisting of the journals before mentioned, and also a journal and ledger for that general office.

Q. Now, at the beginning, what, if any, information did you obtain, and where, with which to start the books?

A. It was necessary to immediately communicate with the stores of the defendant company and secure from them bank statements closing June 3, that being the date of the receivership, to reconcile those bank accounts, [217] to locate any items that had been misplaced or lost in transit, to reconcile the cash accounts of those stores, and to inform those stores under Mr. Lieurance's direction as to how they should, in the conduct of the receivership, make their reports to the Receiver.

Q. In the reports that you received from these various stores, did you discover any errors or discrepancies?

A. There were many errors discovered in these cash reports, due to carelessness in transposition of figures and additions; such errors and discrepancies were immediately corrected by correspondence

(Testimony of Phillip A. Hershey.)

with the store managers. All of these errors and discrepancies were taken up daily with Mr. Lieurance and under his instructions and directions the stores were communicated with, the store managers, and the errors corrected while they were yet fresh in the minds of the managers who made the reports. In numerous cases, they would write down that they had paid out an amount to so and so, or to some express company in a certain amount; they did not tell us whether that was express or drayage, or they did not explain the nature of the item. We required a direct explanation of every item that was paid out of their petty cash. Some items they did not explain to us we required an explanation immediately.

Q. Now, what, if anything, was done with regard to preparing an inventory from these sixteen stores that you have mentioned?

A. Acting under the direction of Mr. Lieurance, an inventory of the sixteen stores was taken, concurrently, on June 21, 1926, those inventory slips bearing the lot number, the number of items, the designation of as to whether it was dozens, gross, cartons, etc., a description of the items, its cost price and its selling price, were made, then the slips were sent to Oakland, and there they were computed, the computations verified, the additions checked, and the total inventory made.

In these computations and checking, etc., I worked in daily conjunction with Mr. Lieurance, and also with Mr. Sullivan, who was [218] here, a buyer

(Testimony of Phillip A. Hershey.)

of the defendant company, and primarily, though, with Mr. Lieurance. We were engaged approximately eight days and nights consecutively, in reducing these inventories to a definite figure. The occasion for working at night upon that work was that Mr. Lieurance wished that inventory computed at the earliest possible moment. The receivership was to be made permanent, if it was to be made permanent, on the 5th of July. Mr. Walter Ernst was in California at the time, and he likewise wished the inventory to be computed as fast as possible.

Q. How many people did you have assisting you in your office in that particular work?

A. In that particular work there were in the office of the Receiver, I should say, without direct reference to the books, 12 or 14 people, who were working on the computation of this inventory.

Q. Were they in your employ?

A. They were in the employ of the Receiver.

In making these computations, we had mechanical apparatus; we attempted to rent mechanical apparatus from the Comptometer Company, and they told us they would charge us $5 a day for each machine, and we needed fifteen machines, and we were trying to keep expenses down as much as possible, and because I am in public accounting practice I borrowed these machines from them, and the Receiver paid a nominal rental of $20 for the fifteen machines for eight days.

The inventory as finally computed was $599,717.72.

(Testimony of Phillip A. Hershey.)

Those stores were being conducted as live and running stores; and during the period that they were so conducted, there was merchandise being bought and sold. It was a part of my business as an accountant there, to receive invoices.

Q. And the various managers of the different stores, did they buy directly the goods that they obtained, or did they make a sort of a requisition through Mr. Lieurance for those goods?

A. The [219] store managers were directed by Mr. Lieurance at the beginning of the receivership to order no merchandise. He likewise instructed as many firms as it was possible to do by word of mouth and by communication from managers not to ship any merchandise on any order, unless it bore a stamp and a signature authorizing the purchase of that merchandise by the Receiver. He likewise instructed these store managers to make a purchase order and send their purchase order to him for his approval and authorization. Those purchase orders came in to the office in Oakland. The total amount was computed. That was added to the previous purchase orders sent in by the stores, and daily conference during the course of the receivership was held with Mr. Lieurance regarding whether it was advisable to allow a purchase by certain stores based upon the sales that they had been making previously.

Q. Did those orders, or preliminary orders that thus came first to Mr. Lieurance, pass through your hands?

(Testimony of Phillip A. Hershey.)

A. They passed through my hands, yes.

For instance, Mr. Lieurance would take a purchase order of goods coming from one of the stores, and examine it and check it to determine as to whether or not he would consent that that order go through. Upon numerous occasions, he struck out from the orders, some of the proposed purchases. After he had examined the order, and cut some of it out, we would make a record of it.

Q. Subsequent to the passing of that order through, and its going on to the business house from which the purchases were to be made, was any further record of that transaction brought back to you?

A. It was to this extent, that the purchase order authorized bore a notice to the house from which the goods were being purchased that duplicate invoices should be mailed immediately to the Receiver's office in Oakland, and that the original invoices should accompany the goods—the original invoice went to the store, the merchandise was checked in on that invoice, the invoice then bore [220] the approval of the store manager that that merchandise had been received, and mailed by him to Oakland. It was there checked back against the purchase order, to see that the goods which had not been ordered had not been placed upon the invoice, and to also see if the price was correct.

Q. Did you make those examinations with those invoices, or did Mr. Lieurance, or did both of you?

A. I made the examination of the mathematical

(Testimony of Phillip A. Hershey.)

part of the invoice, and if there were any errors we immediately conferred, that is, Mr. Lieurance and myself, regarding these errors, and corrected them at once.

Q. You mentioned something about transfers of merchandise; state what you mean by that.

A. I might give an illustration, that we found a store at Bremerton, Washington, had enough rubber boots in that store to fully equip the city of Seattle. All of these rubber boots could not be sold in Bremerton, it was therefore necessary to transfer some of that merchandise out on the front line, where it could be sold in various localities.

Q. By "front line," you mean other stores?

A. The other stores. Inasmuch as this merchandise was being transferred out of that federal jurisdiction, into another jurisdiction, it was necessary that accurate records be kept of such transfers of merchandise. These records were kept, and they were checked in approximately the same fashion that the purchase orders and invoices were checked.

Q. Now, with regard to bank accounts, tell us about the bank accounts?

A. The Receiver maintained a bank account in sixteen local banks, I mean by that he maintained a bank account where each store was located. He also maintained a bank account in the city of Oakland. The store managers were authorized to carry only a fund sufficient in their cash till to provide change for day-to-day operations. They were instructed then to remit to the Receiver daily any

(Testimony of Phillip A. Hershey.)

balance remaining over and above that agreed amount. These bank accounts, the seventeen abnk accounts, were reconciled [221] monthly during the course of the receivership. The general bank account in the city of Oakland has been reconciled monthly since the closing of the bank account at the various stores.

During the progress of this receivership, the moneys that came into the hands of the Receiver were kept in a bank at Oakland. This money was drawing interest, and the total amount received up to the filing of the final account was $3,539.86.

Q. You spoke of reconciling bank accounts. What do you mean by that?

A. I mean that a bank account might show, that is, a bank account might show an amount as being to the credit of an individual or firm, but that is not the true balance of that account, as far as the books of the individual or the firm is concerned, because there might be unpaid items against that balance, therefore it is necessary to check, and see what items have been issued remaining unpaid, at the date of the statement, and deduct those items from the balance appearing upon the statement as issued by the bank; to also add to that balance any amounts which were reported to have been in transit, at a future date to check back and see that those items reported in transit were properly received.

There were a few local operating expenses, such as water, heat, light, etc., which were paid by the local store manager. The rest of the payments

(Testimony of Phillip A. Hershey.)

(expenses) were made by check, in the majority of cases.

There were 687 creditors, whose accounts appeared upon the ledger; so that when we came to make payment of dividends to the creditors, the dividend checks were drawn to each of these various creditors, respectively.

We received daily reports of the sales that were made in these various stores during this period. These reports contained data as to the actual sales, the expenses that were paid in cash and the amount of the cash remitted. A report was received daily that carried the merchandise invoices that had been received, or the merchandise [222] transfers that had been received. Attached to it were the petty cash vouchers supporting the petty cash expenditures.

Those reports were consolidated daily for the sixteen stores. First the report was made up as to each store, and then the total for all of the stores, so that we might know what the total sales to date were for each store, and also for the total number of stores. Our cash reports and consolidated trial balances, together with our consolidated operating statement, were made monthly. I also computed the percentage on the individual operating statements. I submitted all of those matters to Mr. Lieurance; and a copy of the monthly statement was sent direct from my office to receiver Gotthold in New York City, every month. After each day's proceedings were thus recorded, and

(Testimony of Phillip A. Hershey.)

records made by me, those records were turned over to Mr. Lieurance daily.

There were insurance policies upon these various documents (*sic* should be "stocks of merchandise") in these different stores. The policies had to be increased or decreased as the merchandise was sold out of the store and we received credit for that decrease, and, naturally, were charged with the increase in the premium; but the insurance was maintained at a proper level. In some cases at the inception of the receivership, it was too high, and in other cases there was absolutely no insurance on the stock of merchandise in the store. These matters became a part of my service in recording and checking them.

I remember about the time when it was determined to sell the stores out as a whole. I was called into daily conference with Receiver Lieurance and Attorney Eliassen; I also had conferences with prospective purchasers.

Q. What was the nature of their investigation, or was there any such investigation by them that necessitated your reviewing your books of account, so that you informed them of the status?

A. They wanted to know the approximate inventory at that time, they [223] wanted to know the fixed and variable expense for each of the stores, they wanted to know certain information about how much was paid each man in the store, and whether these men would be available to a certain extent, but that part was more Receiver Lieurance's

domain than mine. They questioned me mainly about the figures of sales and expenses.

I was able to inform them quite fully, as to the status of the stock in the stores, the amount of stock in the stores from time to time. When these stores were sold, they were sold as of a certain date. In other words, the stores were continued in operation by the Receiver for a period of time after bids were actually received for them; it was the understanding with the prospective purchaser, that the stores would be kept alive.

After the bids were received and returned to court, it was necessary for us still to continue with the same degree of accuracy, complete records of the stores and the information in relation to them, because we had to make complete detailed settlement statements to the purchasers of the stores, and they were very exacting in their demands as far as statements were concerned.

I think there were approximately six or seven purchasers; I would have to refresh my memory by looking up the settlement sheets. When we came to make the transfers, services were required of me with regard to adjustment of insurance and taxes, and the prorating of those things with the purchasers. Those matters were calculated up to the date of the approval of the sale of the stores by the confirmation of the sale of the stores by the Court. So far as I know, the stores were actually delivered into the hands of the purchasers quite early after the orders of confirmation of the sales

(Testimony of Phillip A. Hershey.)

were made. It was understood that the purchases would be made as of the date of August 31.

I was required to make the adjustment with these purchasers when they came actually to receive delivery of the stores and pay [224] the money. They wanted a full report of all sales, of merchandise transfers out of the store, all merchandise transferred into the store, all purchases of merchandise, all payments, either by petty cash or by check made from or for the account of that store, also a statement of the *pro rata* of the insurance and a *pro rata* of the taxes. It was my understanding that it was understood with the purchasers that the stores would be maintained as going concerns until the actual delivery of them.

There were many claims filed here by creditors. We made a record of those claims as they came in. We did not keep a book in which those claims were shown, but we maintained what is known in accounting as working papers, which take the place of bound volumes.

There was correspondence carried on in regard to these claims. I corresponded with a number of claimants. Duplicate of such correspondence are attached to the claims filed here in this court.

I was called into court, or before the Master, in five, or six, or seven instances, where contested claims were being heard and considered. Those hearings were had in the chambers of Commissioner Nebeker, in Oakland, California, where my office is.

(Testimony of Phillip A. Hershey.)

Some claims were filed in New York, and others were filed here. I went to New York, under the instructions of Receiver Lieurance, and under the orders of the various courts in the western jurisdictions. The Receiver had been endeavoring constantly to secure from his co-Receiver in New York and Attorney Ernst, information which was essential to round out our accounting here, and my conduct as an accountant of this business. I went to New York November 10, 1926.

At the inception of this receivership, the books and records of the Pilcher Co. in New York had not been brought down to date. The books had lapsed with the 28th of February. They kept no books to speak of *that after* date.

When I went to New York, I received there information from [225] accountants connected with the receivership in New York, concerning these books, up to the date of the receivership in this way: I worked with a firm of accountants in New York, in the checking of the items which had been posted into the accounts, possibly the ledger, from February 28 to June 3, the date of the receivership. So that, while in New York, and in conjunction with the accountants there, I examined the books of the Pilcher Company from February until the inception of the receivership. I transmitted that information into my working papers. I was absent on that trip 38 days; there was traveling time in between; I do not recall just what that traveling time was. While I was in New York, I

(Testimony of Phillip A. Hershey.)

worked on this matter daily, excepting holidays and Sundays. I found it necessary to work at night there. I made reports to Receiver Lieurance daily of the information that was being secured in New York; I also prepared some schedules at night.

In New York, I also performed services in connection with an examination into the proof of the claims which had been filed with the Receiver in New York City. In examining those claims, it was necessary for me to look back into the books of the Pilcher Company as they existed in New York; it was necessary to check some of the claims back to the very first entry that had been made upon the ledger of the creditors of the company, check the proof of claims with that account. That took me back to the time that the company first began to purchase.

(Recess was taken at this point until 2 o'clock P. M.; when the hearing was resumed, Mr. Crosby stated in the record that during the noon hour Mr. Hershey, the witness on the stand, had examined the vouchers relative to the four items to which attention was called by Mr. Heney "this morning" when questioning Mr. Lieurance; and the witness testified upon this subject as follows:) I find that the first voucher is dated October 6th, No. 460, in the amount of $158.17; I also find that Mr. Eliassen and Mr. Lieurance left for the northwest [226] on October 9th, three days later. The voucher dated October 26th, No. 539, in the amount of $188.17, bears the notation "Traveling expenses."

(Testimony of Phillip A. Hershey.)

I find that Mr. Lieurance and Mr. Eliassen left Oakland for the northwest on October 25.

(At this point, Mr. Heney directed the attention of the witness to the fact that there was another item, dated October 28, appearing on page 595 of the account, reading "A. F. Lieurance, Traveling Expense $203.60"; the witness then said: "I would have to refer again to the vouchers"; and Mr. Heney then said, "Do not stop now"; and the witness said, "I will make a note of that.")

Referring to the other two items, the witness testified: There is an item dated October 30, voucher 575, in the amount of $275.16, and on this voucher it states, "A. F. Lieurance To Northwest Traveling Expense." That would be railroad fare, payable to the Southern Pacific Company, and the checks were drawn to the Southern Pacific Company.

The item of December 11, voucher No. 625, in the amount of $155.43, the voucher bears the notation, "Travelling Expense of Lieurance and Eliassen, to the Northwest"; and that check was likewise to the Southern Pacific Company. (Mr. Heney then directed attention to another item bearing the same date, December 11, 1926, reading as follows: "A. F. Lieurance, Travelling Expense $200.00"; and it was then explained by the witness that the first item was for railroad transportation, and was paid direct to the Southern Pacific; and it was explained and agreed between counsel that the other items was for expenses in addition to

(Testimony of Phillip A. Hershey.)

the payment to the railroad company for fares, such as the expense of hotel bills, etc.)

At this point, Mr. Crosby as attorney for the plaintiffs, stated that the dates of the orders confirming the sales, respectively, were as follows:

October 25, date of the order made at San Francisco, confirming sale to A. L. May in the sum of $41,000; [227]

October 30, date of the order made at Spokane (Eastern District of Washington) confirming the sale to Harrison in the sum of $13,000, and the sale to Phil A. Ditter in the sum of $16,000, both sales being made at Spokane and confirmed on that date by the same Judge.

November 1, date of order made at Portland (District of Oregon) confirming one sale of a group of stores to the Tannhauser Hat Company for $85,000, also confirming a sale of one store to Liberman & Rosencrantz for $12,000.

November 3, date of order made at Seattle (Western District of Washington) confirming a sale to J. S. Wall for $90,000.

Direct Examination of Witness by Mr. CROSBY (Resumed).

While in New York, I did some work in connection with the figuring or adjustment of some of the claims there. As to some of the claims that had been filed, the books of the company would not show all of the items which were contained in the claim, and it was necessary to make some adjustment between the books and the claims as filed.

(Testimony of Phillip A. Hershey.)

That work I did, in conjunction with the accounting firm in New York.

I also had something to do with the checking of the proofs of claims attached to the claims, both in New York and in Oakland. I compared those claims with the ledger accounts of the company. In some instances, claims were presented for the full purchase price of goods or fixtures, when, as a matter of fact, they were being bought on installment payments. The claim of the Webber Show Case Co. was an instance of that kind. They presented a claim for $33,743.21. That claim covered goods or merchandise that was sold to the company on installment payments. I had something to do with the adjustment of that claim, but that work was done in Oakland at [228] the time that there was a hearing upon the claim of the Weber Show Case Co. before Commissioner Nebeker. That claim was reduced by an amount of $16,871.60. There were other like claims that were reduced, but not any one as large as that; that was the largest reduction.

The witness then identified a document as a "report of claims received and allowed," and testified concerning it in substance as follows: All general claims are referred to in this document; the preferred claims are not included in this schedule. I have no other schedules of claims like this; this is the only schedule of claims that I have. I have other schedules relating to other branches of this business, and which I have prepared as a part of

(Testimony of Phillip A. Hershey.)

my services in this matter. I have copies of them with me.

Mr. CROSBY.—We will offer in evidence, if your Honor please, all of the schedules that the witness has referred to, having to do with his services as an accountant in this matter, and without specifically identifying them, ask leave to permit the witness, when we close the hearing, to assemble them and leave them here on the desk. Is that all right Mr. Heney?

Mr. HENEY.—Yes, that is all right.

Mr. CROSBY.—Likewise his books of account and records.

WITNESS. — (Continuing.) During the long period of time, while I was in New York, I kept in constant communication with Mr. Lieurance as to what I was discovering and as to what I was preparing. It was necessary to correspond at some length with him in reference to what was transpiring; it was also necessary to call him by telephone on some urgent matters.

While I was in New York, I attended the meeting of the New York Creditors' Committee. I did some work in connection with some of the representatives of the New York Credit Men's Clearing Bureau, in connection with this receivership. At this meeting of the New [229] York Creditors' Committee it was suggested that the first dividend be paid as promptly as possible; they wanted the dividend to be as large as could properly be paid at that time, but there was such a discrepancy

(Testimony of Phillip A. Hershey.)

between the records of the accounts payable as kept in New York and the claims filed that we at that time did not know what the total amount of the claims would be. It had been reported to us that approximately $600,000 would be the total liabilities. Upon investigation I found that they were greatly in excess of that amount, by approximately $140,000. Of that amount, a great number of creditors had not filed claims; it was decided that we should make a last request of such creditors to immediately file their claims within the next 24 or 48 hours, and that work we did, working the better part of an evening and night, that is, I say "we," the representatives of the New York Credit Men's Clearing Bureau and myself got out notices so that they would be in the following morning's mail.

As a result of that work, above mentioned, additional claims poured in by messenger and registered letter. I should say that perhaps 50% (in amount) of the claims which had not been filed, were filed within the next few days. After that, I returned to Oakland.

In the preparation of the final schedules, growing out of these claims, I performed the following work: I prepared a final schedule of liabilities of the defendant company as they had been adjusted to the claims filed to date; comparing those two, I found that there were yet about $75,000 worth of creditors or creditors' claims which had not been filed.

Subsequently they filed claims. We corresponded,

(Testimony of Phillip A. Hershey.)

or, rather, I corresponded, under Mr. Lieurance's instructions, with these people, telling them that their names had appeared as creditors upon the books of the defendant company, and that it was the wish of the Receivers that all creditors share at the same time in [230] this first dividend, and would they please file their claim or else send in a waiver of their right.

In connection with the payment of the first dividend, I performed the following services: I computed the amount of the dividend checks, based upon the claims which were allowed, prepared the checks, and after they were prepared checked the total to see that the total amount of the checks agreed with the 40 per cent of the total amount of the claims filed, and delivered the checks to Mr. Lieurance.

I had occasion to go to the stores in the northern jurisdictions. Acting under instructions of Mr. Lieurance, I left Oakland, California, and on September 17, 1926, went to Portland, Oregon, and Bremerton, Washington, for the purpose of checking the cash accounts of these stores, and also for the purpose of visiting the stores at Monroe and Everett, Washington. I arrived in Portland, and arrived at the door of the store prior to the opening of the store, and asked immediately to count the cash. Upon counting it I found that the cash was some $600 short. I questioned the store manager about the shortage, and he said, "I will give you a check for it, that is just an I. O. U. account."

(Testimony of Phillip A. Hershey.)

I said, "I would suggest that you give me a certificate of deposit to the account of the Receiver by three o'clock this afternoon," which he did. I also discovered that he had, previous to the receivership, drawn funds from the Portland store. I made private investigation on my own behalf in Portland and found out that I had already secured all the money he had when I got the $600, so I took the next best chance and got a promissory note for the balance, I believe it was in the neighborhood of $1,600. This money had been taken from the accounts of the Portland store prior to the receivership. I immediately communicated with Mr. Lieurance by wire, and told him the circumstances, and he instructed me then to discharge this manager, and the cashier and clerk who had been working in conjunction with him. That I did. [231] I also suggested the name of the head clerk—each of these stores had not only a manager, but they were fortified to this extent that they had a man who was a head clerk, that is, if the manager was incapable of performing his duties, the head clerk by prearrangement stepped in and ran the store. This man was satisfactory to Mr. Lieurance, I assume, because he instructed me to instruct him in his duties as a store manager, and how to make proper reports. I introduced him at the bank and arranged for his banking facilities, etc. We did not, by the way, replace the two clerks, the cashier and the clerk, that were discharged. We just cut the pay-roll to that extent. I then proceeded to

(Testimony of Phillip A. Hershey.)

Bremerton, Washington, as fast as I could, because news travels fast in a chain store organization, and I found a situation there which in my opinion called for the discharge of two employees from that store. I immediately communicated with Mr. Lieurance that information, and he instructed me to discharge those employees, and I did, and their places were not filled.

I see these accounts that are filed here. I prepared these accounts. They are made up from all of these records that I have brought into existence, to record the transactions of this business from the beginning. The final account is a complete itemization of every transaction of the Receiver, every financial transaction, I should state. When I made up this account, I found it necessary to go back to the beginning of my records and follow them on through, check them up; and I did that.

Q. Now, do you know if accounts were prepared, such as the one as it is on file on his Honor's desk, there, and sent in to all jurisdictions?

A. They were prepared for each jurisdiction, that is, each of the western jurisdictions, and copies filed with the Courts in these jurisdictions.

Q. Do you know if any was sent to the Co-receiver, Mr. Gotthold, in New York, or his attorney?

A. Yes, there was a copy of the account sent to Mr. Gotthold immediately upon completion of the account. [232]

The first dividend was 40%; the second dividend

(Testimony of Phillip A. Hershey.)

was 10%, and was paid on the 13th day of May, 1927, —that is, 10% of the aggregate claims allowed.

Q. Could you give us approximately the number of letters that you have had to write in connection with this business?

A. Well, by count, over 200 letters. Not having access to the claims filed, I could not give you the exact number, but I do know there were over 200 letters written by me in reference to the receivership; in my own opinion many times that number.

Q. Now, approximately how many days were you taken away from your office and out of the State of California, in connection with this business?

A. For approximately 48 days.

Sometimes Mr. Lieurance, himself, was out of the city of Oakland in connection with the business. During these times, from the Oakland end of this business, I kept Mr. Lieurance informed daily, in complete detail, as to all transactions that transpired, when he was up north and away from the city on business.

Q. In the performance of your duties in the conduct of your branch of these affairs, state whether or not you were in consultation or called upon to consult with Mr. Eliassen, the attorney, in addition to Mr. Lieurance, the Receiver?

A. I can state from the records that there was not a day passed for the first five months of the receivership but what I was in daily contact with Mr. Eliassen and Mr. Lieurance, when they were in Oakland. Of course, I was in communication with

(Testimony of Phillip A. Hershey.)

Mr. Lieurance when he was out of Oakland, but that was by letter and wire.

Q. You say not a day passed? Do you mean Sundays and holidays?

A. I mean that there were many Sundays and many holidays.

Q. That you worked? A. That I worked.

Q. On this business? A. On this receivership.

Q. How about hours after the usual laboring hours of the day; did you work on some of those occasions at night, at all? [233]

A. I worked, I might state, so many nights that I almost had some family difficulty, having been married only the year before.

Q. It got so you had to report as to where you were? A. I had to report.

Q. You reported truthfully?

A. I reported truthfully.

Q. Would you say that you, upon many occasions, worked with these gentlemen in connection with this business in their offices, or your office, at night?

A. On many nights, not only to the office, but I was called to Mr. Lieurance's home evenings to discuss these matters and report upon the affairs of the receivership.

Q. Mr. Hershey, state whether or not you were required to hold yourself in readiness at all times to respond to this particular business.

A. I was to the extent that I had to subordinate other work in my own office.

Q. Did you subordinate other work?

(Testimony of Phillip A. Hershey.)

A. I certainly did.

Q. Mr. Hershey, in your judgment what is a reasonable compensation for these services that you have performed here, as you have outlined them?

A. I believe that not less than $10,000 is reasonable compensation for the services rendered.

Cross-examination, by Mr. HENEY.

In describing this work that I did, when I used the pronoun "I," and stated that "I did this and did that," I do not mean to be understood as saying that all of this detail work was done by myself, personally; I had assistance.

There was a bookkeeper employed by the Receiver, from the middle of June, I should say, until the end of December. This bookkeeper was a woman, by the name of Harmon, and her salary was $27.50 a week. She performed just the general duty of a bookkeeper and office assistant, under my constant direction. I would class her as a competent bookkeeper.

Q. To what extent did she check the reports that were made of cash, receipts from sales of each of these stores?

A. I should [234] not say that she checked these reports; I check the reports myself. These reports came to me to be checked.

Q. Every day? A. Every day.

I do not believe that she assisted in any of this work of computing the amount of percentage on the dividends.

(Testimony of Phillip A. Hershey.)

At the time we were taking the inventory in June, there were 12 or 14 people assisting in that work. They were employed by the Receiver. I both supervised and directed their work. They were women. They were in the employ of the Receiver only for the period of time that the inventory was being computed. These women that were employed worked these machines.

Q. When you first commenced there did you have any assistants other than Miss Harmon, when you first commenced on the books, or did you have them?

A. No; we did not know what this receivership was going to turn into, and the work piled up so fast that the mass of detail had to be attended to, and it was then that she was brought in.

The Receiver did not employ anyone besides Miss Harmon, at any time, to assist me. I had others in my employ, assisting me in some of this work.

Q. How many persons that were in your employ, and to what extent did you have assistance?

A. Well, there was a mass of work that had to be done, such as work on these working papers that I speak of, these cross-additions, etc., I had two people working on that at times in addition to myself.

Q. To what extent?

A. I do not quite understand what you mean, to what extent they were employed.

Q. A number of days, or a number of weeks, or a number of months, or how much time?

A. A number of months.

(Testimony of Phillip A. Hershey.)

I do not mean that they put in their entire time on it. I had other work in the office on which they were engaged at the same time that they were doing this other work. Occasionally they would [235] do some of the computations.

Q. It might be half an hour's work a day and sometimes an hour? A. And sometimes a day.

Q. And sometimes a day? A. Yes.

Q. Not very often? A. Sometimes weeks.

Q. Not so that you could give us a statement of how many days they put in?

A. I do not believe that I could do that, no.

I had other work in the office. I gave attention to the other work in the office during this period.

Q. How did the total volume of work in your office compare with the work of this particular business?

A. Are you asking me to answer in terms of dollars and cents, or in time of employment?

Q. In labor.

A. Well, I cannot state definitely how many clients I have; I will be very frank with you, I could not tell you off-hand. I have quite a number of clients, I will say that, but their affairs were attended to. A great many of my clients, their affairs had to be postponed until this matter was over; on rendering income tax returns, it was necessary for me to require extensions of time for filing clients' returns; but as to just how much in percentage this work took in comparison with other work, I could not state.

(Testimony of Phillip A. Hershey.)

I have other accountants employed in my office, only from time to time, as the occasion arises. Accountants are high-priced men to employ, and we do not care to have them around when they are not working. We pay them anywhere from $10 to $15 and $20 a day.

It is not true that my regular charge to clients for an accountant is $25 a day. It varies with the intelligence of the men and the character of the work that they are doing, in making the charge to the client.

Q. If I came in there and stated I wanted to have a set of books audited by an accountant, without giving you any other information, wouldn't you tell me it would be $25 a day? [236]

A. No more than if I would come into your office and ask you to try a law case for me, and not give you any details of the case, and you say $50 a day.

Q. You might come into the office and I tell you $50, or $75, or $100 a day.

A. I used to do that when I first started to practice, and I got burned so many times on my fees that I decided it was better to compute the fee upon the basis of the work done, and the character of the work done, and the time required.

Q. Isn't it a general standard of practice among accountants such as Price, Waterhouse & Co., to charge $25 a day for an accountant?

A. For one type of accountant; for some they charge $100, $250, $500 a day, depending upon the type and character of the work they are doing.

(Testimony of Phillip A. Hershey.)

Q. Is Mr. Price living? I thought possibly he might be the only $500 a day man in the world.

A. We have a $500 a day man in San Francisco, John Forbes, of Haskins & Sells. He has been known to charge $500 a day.

Q. He is a partner in that firm?

A. He is a resident partner of Haskins & Sells.

I could not tell you what they charge for accountants with five years' experience only, because I don't know about their business. I have been a public accountant for five years. Prior to that I was in the University of Illinois.

Q. You had no bookkeeping experience prior to becoming a public accountant: Is that correct?

A. Bookkeeping experience is not necessary to the practice of accounting, and I did not have any.

Q. That was not my question; I am not asking you to testify as an expert on that subject, I am asking you a question.

A. I did have experience in keeping books, yes.

Q. How much experience and what experience did you have?

A. Well, I kept a set of books for my mother about a year when I was attending the University of Illinois, and the course given at [237] the University of Illinois, as a part of the curriculum as keeping such books, and in that training I had additional bookkeeping experience.

Q. You cannot very well learn bookkeeping without trying to put something down in a book.

(Testimony of Phillip A. Hershey.)

A. We did that very thing, we were given entries and certain transactions, and we put those transactions into these books.

Q. In other words, you studied bookkeeping at the University of Illinois?

A. I studied accounting at the University of Illinois.

Q. That includes bookkeeping?

A. That includes bookkeeping.

Q. What is the distinction between bookkeeping and accounting?

A. A bookkeeper is, I suppose, one who can make a number of entries in a set of books after the way has been paved for him to make those entries.

I should say that I was engaged probably from five to ten days in formulating a set of books to be used by the Receiver at his Oakland office.

Q. Now, after those ten days of work, what work was done by you that a bookkeeper would not do, or would not be able to do, a competent bookkeeper?

A. I could not answer that question, because I don't know what a competent bookkeeper could have done under those circumstances.

Q. You had a competent bookkeeper there, didn't you? A. I judge that we did.

Q. Couldn't she have made those entries without any assistance from you?

A. That is merely a supposition. I acted under instructions of Mr. Lieurance, the Receiver, and my services were rendered under his instructions.

(Testimony of Phillip A. Hershey.)

Q. He did not instruct you as to the manner or method of keeping the accounts, did he?

A. No, he did not.

Q. Nor making the entries?

A. He told me what results [238] he wanted from these books.

Q. Did it require any peculiar skill as an accountant to check up the cash accounts that came in from these stores? A. I should say that it did.

Q. Something different from what an ordinary competent bookkeeper would have to know?

A. Yes.

Q. What was it?

A. The administration of the chain's business, there are many problems and many questions arising that do not arise in the conduct of an individual business, because there are inter-company or inter-store transactions that are extremely difficult to handle.

Q. For instance, one store gets some merchandise from another store? A. Yes.

Q. That is very difficult to handle in bookkeeping, is it? A. I should say that it was.

Q. What is there difficult about it?

A. The inter-store transfers of merchandise were not paid for in cash. There was a branch office account on the other side with each of these stores; that was a summarizing a totalling account, and these transactions were cleared through that account, all of the transactions between the stores, and

(Testimony of Phillip A. Hershey.)

it required skill to do that, to see that that was done properly and accurately.

Q. It was not any more difficult than clearing checks for banks?

A. I have never cleared for banks, so I could not answer that question.

Q. As an expert accountant, do you mean to say you don't know anything about how that is done?

A. I do not know how it is done.

Q. The other isn't any more difficult, is it, that you were doing, on these transfers of the chain stores?

A. I should say that they probably are equally difficult.

Q. What proportion of your time would you say that you gave to this business exclusively during the period of time that you [239] were engaged in it?

A. I believe you asked me that question before, and I told you that I could not state what proportion of my time I gave. I was constantly available for the Receiver and his attorney from early morning until late at night.

Q. Your offices were right almost adjoining, weren't they, in the same building?

A. Correct.

Q. And you did not hold yourself in office just to hear from them?

A. No; they held me in their office so that they could hear from me.

Q. You do not mean to say that you remained

(Testimony of Phillip A. Hershey.)

in their office during most of the time during the day?

A. I mean to say that the conduct of this business was of such nature, and there were so many transactions, that it was necessary for me to be in constant and daily touch with Attorney Eliassen and Receiver Lieurance.

Q. Yes, during the day he might want to ask you some questions, and either walk into your office or ask you to come into his office and ask it of you: Is that what you mean?

A. No, I mean I was called into conference in their office and remained hours and hours at times.

Q. That did not happen every day, did it?

A. Practically every day, Mr. Heney.

Q. And hours at a time practically every day?

A. Yes.

Q. How many hours at a time?

A. Well, three, two, four, one—we have been in conferences that lasted all day, of course, going out for lunch, and at times going out for dinner, and then returning afterwards.

Q. Did you get the impression around Mr. Eliassen's office that he was not doing any other business except this?

A. No, I did not get the impression that he was not. I got the impression, though, that this business was taking a tremendous amount of his time.

Q. You could not say what proportion of his time, either, could you?

A. I did not keep Mr. Eliassen's books. [240]

(Testimony of Phillip A. Hershey.)

Q. I concede that there was a large amount of work done, Mr. Hershey, I have not any doubt about that, but I am trying to get at the amount of your time which was actually given to it. When you talk about one, two, three, and four hours a day, I would like to know how many days, about, that occurred during this period of time.

A. Well, in the period covered I put in, I should say, some 2,600 hours.

Q. Is that an estimate, or a guess, or what?

A. No, it is taken from my time-books.

Q. Did you have any fixed charge per hour for work?

A. I have no fixed charge per hour for work; it varies from $4 an hour to cases in which I have appeared before courts and the like of $50 an hour.

Q. You mean appear as an expert witness?

A. Yes.

Q. Leave that out, because that is not involved in this case.

A. Well, from $4 to $10 an hour.

I cannot give you any approximate figure as to what, if anything, was made by operating these stores; I have not those figures available.

Q. Can you give us the total operating expense of each store, or does your account show that separately, do you remember?

A. The account does not show that part separately. I was informed that the accounts that were filed in legal form were different from accounts filed, from an accountant's standpoint, but that information

(Testimony of Phillip A. Hershey.)

could be obtained from the books, and the month to month information will appear in the schedule that I will supply this Court, as you already know.

Q. That is a thing you are going to supply?

A. Yes, I will.

Prior to my employment by the Receiver, I did work for Mr. Lieurance. The work that I did was in reference to his income tax return. I did not do any other work for him.

Referring to the example I gave of some transfers of rubber [241] boots: There were quite a number of transfers made between these stores. Mr. Lieurance went and visited the stores, I believe it was after the inventory had been taken, and endeavored to find out what one fellow needed at one store, or perhaps another fellow needed at another store, so that the Receivers would not be forced to go out into the market and buy these goods. As to the number, I could not tell you, although there were a great number of such transfers.

The 2,600 hours I referred to, I took from a memorandum that I kept. I keep a record in which I enter my personal time, and the jobs that I work on. I did not keep an exact record of this particular job, because this was occupying so much of my time; and, and as so many attorneys and so many accountants have done, I did not put down the exact number of hours and minutes; but I did take the number of hours used on this work.

Q. I notice you bring the attorneys into that. Are you basing that on Mr. Eliassen's books?

(Testimony of Phillip A. Hershey.)

A. No, I am not basing that on his books. That figure is entirely mine.

Redirect Examination, by Mr. CROSBY.

Q. Mr. Hershey, as I questioned you here on the stand, you have had a memorandum before you. The testimony that you have given is approximately all stated in that memorandum, is it?

A. Yes, it is.

A general statement by Phillip A. Hershey, purporting to state in detail the services rendered by Mr. Hershey (being the "memorandum" above referred to in Mr. Hershey's testimony) was offered by the plaintiffs and received in evidence, without objection, with the same effect as oral testimony, and subject to the right of cross-examination concerning the matters contained therein, and with the understanding that this statement by Mr. Hershey had been submitted to experts called or to be called in reference to his fee; and such statement was identified as Receiver's Exhibit 4. (See Transcript, pp. 50, 64, 86, 87.) [242]

TESTIMONY OF ANDREW FAIRCHILD SHERMAN, FOR PLAINTIFFS.

ANDREW FAIRCHILD SHERMAN, called and sworn as a witness for the plaintiffs, testified, in substance as follows:

Direct Examination by Mr. CROSBY.

I live in Oakland. My business is that of a cer-

(Testimony of Andrew Fairchild Sherman.)

tified public accountant, which I have been for about four and one-half years. I have been engaged in public accounting since 1918. My work leading up to public accounting, began as a bookkeeper with J. K. Armsby & Co. in 1909.

I am a director of the California State Society of Certified Public Accountants. I am a member of the American Society of Certified Public Accountants.

I know Mr. Hershey, the gentleman who preceded me on the stand. I was here during the morning, while he was on the stand, and I was here a part of the afternoon while he was on the stand.

I have seen and read a typewritten memorandum that Mr. Hershey had this morning containing the general statement of the services that he has rendered in this matter.

Q. I will ask you what your judgment of the value of the services so rendered by him as described by him in your presence upon the witness-stand, and as indicated by his statement that you have read?

A. I consider a reasonable fee for those services to have been $15,000.

Cross-examination by Mr. HENEY.

Q. What is there about these services that distinguishes them as accounting services as distinguished from bookkeeping services?

A. It is a question of the judgment required in

(Testimony of Andrew Fairchild Sherman.)

the handling of the detail and the interpretation of the detail.

Q. The transactions were filed by somebody else, and the bookkeeper exhibits those transactions: Is that right? A. That is right.

Q. The transactions come into the office, mostly in written form, and would be exhibited in the books. What is there about exhibiting them in the books that is distinctly an accountant's work as [243] contradistinguished from a bookkeeper's work?

A. The entering of these transactions on the books, themselves, is primarily a bookkeeper's function, the actual entering of these transactions; the matter of keeping track to see that the transactions are properly entered, etc., where there is such a large mass of detail, requires greater concentration and more intelligent application or ability than the average bookkeeper has, and, therefore, that is why we find, where we have detail work of that kind, that it is supervised by an accountant.

Q. Practically all lines of business employ bookkeepers, do they not? A. Yes.

Q. Then an accountant comes in maybe once a month, or once every three months, and audits it?

A. That is right.

Q. Then the bookkeeper exercises this discretion and judgment that you are talking about, as to how to make the entries, doesn't he? A. Oh, yes.

Q. So that if Mr. Lieurance were appointed Receiver, he could have Mr. Hershey come in once a

(Testimony of Andrew Fairchild Sherman.)

month, or once in three months, and do the accounting on that, couldn't he, if the books had been formulated, as to the plan of keeping them?

A. If Mr. Lieurance gave the necessary supervision to the bookkeeper right along; you see, the average bookkeeper cannot be left alone to go ahead with the detail work unless the transactions are relatively simple and are practically the same day after day. Accountants come in and take care of the the numerous irregular transactions which arise day by day. Now, the frequency with which these irregular transactions arise governs the rapidity with which we appear in the office. In other words, it might be necessary, with certain accounts, to come in as often as once a month, because the irregular transactions cannot be handled by the bookkeeper employed. In other cases it might be for longer periods.

Q. A transfer from one store to another might be classified as an [244] irregular transaction, I mean on your definition? A. It might, yes.

Q. After the first one had been made, the second one would be easy enough, would it not—after being instructed how to make the first one, the second one would follow the same lines, would it not?

A. The actual work or method of entering would be the same. The whole thing, in all of this particular work, as I see it, would be the great opportunity for mixing up the accounts between the stores, and that is why the average bookkeeper does not maintain the accounts in proper order,

(Testimony of Andrew Fairchild Sherman.)

and that is where it needs constant supervision of a more intelligent individual than the average bookkeeper. In large stores they have their so-called controller, where they have branch houses, and the like, whose business it is to keep in constant touch with the bookkeepers to see that they are not mixing things up, and to study the accounts from the standpoint of the relationship between the branch stores.

Q. And, in turn, if it is a very large concern, they have traveling auditors go around? A. Yes.

Q. And in getting these traveling auditors, as a rule, they are men who have graduated from bookkeeping and are getting about the same salary as the traveling auditor does?

A. The traveling auditors that I know of get more than a bookkeeper.

Q. Very little more?

A. No, I would not say very little.

Q. About how much per month?

A. Well, a traveling auditor for one concern that I know of gets $400 a month, and all bookkeepers get is about $125, an average of $125.

Q. That traveling auditor who gets $400 a month, he is not one of half a dozen for the same concern —the traveling auditor who gets $400 a month?

A. No.

Q. Is that $400 a month man the general auditor?

A. No, he is the fellow that goes out to the plants. The point that I want to bring out is that the man in that case who goes out as an auditor has to be

(Testimony of Andrew Fairchild Sherman.)

a man who knows a little more than a bookkeeper, [245] who is engaged in routine work day after day, in order to identify something that is going wrong at a plant, who is absolutely reliable.

Q. That is their function, to discover where there is anything wrong going on at these plants and report that?

A. I believe that is usually the function of checking up the accounts.

Q. This one who gets the $400, that you have in mind, is a high-class bookkeeper, a good accountant?

A. A fair accountant, yes. I do not specify that as the average salary of the traveling auditor. For instance, the auditor of the American Telephone & Telegraph Company, that comes out to audit the accounts of the subsidiary concerns, gets a salary approximately ten times as much as that, *then* or twelve times that.

Q. The traveling auditors for Murphy, the automobile man, do not get as much as $400 a month, do they? A. I do not know anything about them.

Q. Nearly all of these automobile companies have traveling auditors, where they have branch houses around in the state, do they not?

A. I cannot say. I know of one concern in the state that does not have a traveling auditor, but has the services of a firm of certified public accountants to make a regular audit each month at the branches.

TESTIMONY OF WILLIS LILLY, FOR PLAINTIFFS.

WILLIS LILLY, called and sworn as a witness for plaintiffs, testified, in substance, as follows:

Direct Examination by Mr. CROSBY.

My home is in Berkeley; my business is in San Francisco. I am with the firm of McLaren, Goode & Co., certified public accountants. I have been engaged in that business, off and on, since July 1, 1916, at which time I left the University of California, where I was an instructor, with the exception of 18 months spent in France, [246] approximately the same period as comptroller of George Burn Co., I think eleven months at the University of Washington as assistant professor. I am a member of the California State Society of Certified Public Accountants; and I am a member of the American Institute of Accountants, which is a separate and distinct organization from the American Society of Certified Public Accountants.

I have known Mr. Hershey since last summer when he came into my office with a question of his charge on this account; prior to that time I had not known of his existence. I was here this morning while he was testifying; and I was here during part of his testimony this afternon. I noted that he was testifying with a memorandum before him. I have read that memorandum, casually.

Q. I will ask you to state what, in your judgment,

(Testimony of Willis Lilly.)

would be the reasonable value of the services rendered by Mr. Hershey in this matter, as described by him from the witness-stand, and in his statement which he has given you to read?

A. I can only answer that question on the basis of what my own organization would have charged as a minimum, and without stating the maximum. After referring to Mr. Hershey's work, after having gone over this report, his monthly reports to the receiver—and this happened last summer—I asked him to give me the total number of hours reflected by his time-sheets as having been devoted to the engagement; he gave me something like 2624 hours, which, on the basis of a seven-hour day, that is, our basis, a seven-hour day, the type of work that was done there would require as the immediate supervisor on the job a man for whose services we charge not less, and this is based on experience, than $30 a day. Whatever junior assistance would have been necessary in order to get these records in shape, for instance in the calculation of that inventory, what supervision would have been necessary is another matter. I could not off-hand tell you what that is on the basis of $30 a day. I would say, off-hand, that the minimum fee, had McLaren, Goode & Co. done that work, would have [247] been not less that $12,000. The maximum I will not state, because I could not determine how much of mine or any of my partners' time would

(Testimony of Phillip A. Hershey.)
have been required in the administration of the Receivership.

(No cross-examination.)

TESTIMONY OF PHILLIP A. HERSHEY, FOR PLAINTIFFS (RECALLED—CROSS-EXAMINATION.)

PHILLIP A. HERSHEY, recalled for further cross-examination by Mr. HENEY.

The interest rate paid on these bank deposits was fixed as the rate fixed by the Clearing House Association, which is 2% on the average monthly balances subject to check; the accounts are subject to check. We endeavored, I may say, to get more, but they presented us with the clearing-house rule, I argued a little, and so did the Receiver, but they could not break their clearing-house rule.

Those stores were not permitted to sell on credit; the business was all cash transactions.

TESTIMONY OF EDWARD R. ELIASSEN, FOR PLAINTIFFS.

EDWARD R. ELIASSEN, called and sworn as a witness for the plaintiffs, testified, in substance, as follows:

Direct Examination by Mr. CROSBY.

I live in Piedmont, California. I am an attorney at law; have been engaged in that business since August, 1899. I am admitted to practice in all of

(Testimony of Edward R. Eliassen.)

the courts of the State of California, all of the United States courts within the State of California, and the United States Supreme Court.

I am the attorney for the Receiver in this matter now pending before this Court. There were two Receivers, Mr. Gotthold of New York, and Mr. Lieurance of Oakland. There are four western [248] (federal) jurisdictions, which have been referred to here, and in which the business of this company was being conducted.

I have conducted the business of those receiverships, as their attorney, in all of these four western jurisdictions. I undertook the attorneyship for these Receivers in the early part of June, 1926.

As I have proceeded with this work, I have kept a record in my offices of my services from time. I have my correspondence, or copies of it, that has come into existence in my business connected with this receivership. I have all of that here, in the courtroom.

(It was then stated in the record, that the documents just mentioned by the witness were available for examination by the attorneys for the objecting creditors, if they so desired; and with that statement and understanding the documents were not offered in evidence.)

I have here a record of my services.

Q. I hand you now this document, beginning with page A and closing with page 133, and will ask you to state if that constitutes a correct statement of your services in this matter, from the time that you

(Testimony of Edward R. Eliassen.)

began as attorney for these Receivers, until the present time?

A. It is a correct statement, but it is not a full statement. It does not contain any items of time spent or labor involved since August 30, for one thing.

Q. Have you a page here upon which reference is made to that service since August 30?

A. No, I have not, Mr. Crosby, except that I state in the beginning, on page F, that it became necessary for me to go to New York City for the purpose of attending the taking of depositions of Walter E. Ernst, William Fraser, and Arthur F. Gotthold. This trip took me away from my office twelve more days. In this estate I have therefore spent 76 days away from my office and outside of the ctiy of [249] Oakland. I might add that I necessarily employed local counsel in the three northern jurisdictions and that I have incurred an obligation to pay them the reasonable value of their services, which we have agreed is the aggregate sum of $2,650.

Q. That page that you have just lastly read from, beginning with the words, "William Fraser," and ending with the figures "2650," you have this day inserted in that statement. Is that correct?

A. That is correct.

Q. Now, Mr. Eliassen, this statement here shows a full and complete statement—or you say it is not quite complete?

A. It is true and correct, but it is not quite com-

(Testimony of Edward R. Eliassen.)

plete. There are a number of letters received lately, and a number of consultations with Mr. Lieurance, but I am willing to submit it on that.

Thereupon, the statement identified by the witness, and verified by him as "true and correct," was offered in evidence, with the understanding that it would be used as the basis of questions propounded to experts, as a representation of the services that had been rendered; counsel for the objecting creditors consented that the testimony of the Witness Eliassen should be introduced in this written form, subject to right of cross-examination; thereupon the document was received in evidence and identified as Receiver's Exhibit No. 2.

Q. Mr. Eliassen, what do you feel would be a minimum reasonable allowance of the services you have performed in this matter? A. $30,000.

Cross-examination by Mr. HENEY.

I mean a total of $30,000; I have received $15,000 on account; and I am asking for $15,000 more.

(Further cross-examination was postponed to enable counsel to examine the written statement made by the witness and received in evidence as above stated.) [250]

TESTIMONY OF JOHN L. McNAB, FOR PLAINTIFFS.

JOHN L. McNAB, called and sworn as a witness for the plaintiffs, testified, in substance, as follows:

Direct Examination by Mr. CROSBY.

I live at Palo Alto. I am an attorney at law; am admitted to practice in all of the courts of the State of California, all of the Federal Courts in the State of California, and the United States Supreme Court.

I know Edward R. Eliassen, professionally, and as a courtroom acquaintance; that is, we have never been intimate, but I know Mr. Eliassen very well.

A copy of the statement, identified in this hearing as Receiver's Exhibit 2, and which purports to set forth in detail the services rendered by Edward R. Eliassen in this receivership has been submitted to me, and I have read it all.

Basing my opinion upon what is set forth in that statement as to the services rendered by Mr. Eliassen in this proceeding and as to the nature of the proceeding, and with the assumption that all local counsel are to be taken care of out of any compensation allowed to Mr. Eliassen, in the sum of $2,650; after studying this document, I have arrived at the conclusion that Mr. Eliassen should be entitled to a minimum compensation of $36,000.

(No cross-examination.)

TESTIMONY OF CHARLES H. SOOEY, FOR PLAINTIFFS.

CHARLES H. SOOEY, called and sworn as a witness by the plaintiffs, testified, in substance, as follows:

Direct Examination by Mr. CROSBY.

I live at San Francisco; my business is that of an attorney at law; have practiced as such for one month longer than twenty-five years; am admitted to practice in all of the courts of the State of California, and the United States courts in the State of [251] California, and the United States Supreme Court.

I know Mr. Eliassen; I have known him for twenty-seven years. I have known him in connection with the law business; at one time, before the fire, we were office associates in the Chronicle Bldg.; I have known Mr. Eliassen that long.

Receiver's Exhibit No. 2 in this proceeding has been submitted to me; Mr. Eliassen gave it to me. There has also been called to my attention to-day, in addition to the statement as submitted to me originally, an additional page which refers to the amount of money that the attorney in this matter is called upon to pay local counsel, who appeared for him in some of the other jurisdictions, amounting to $2,650.

In my opinion, a reasonable compensation or fee to be awarded to Mr. Eliassen for the services ren-

(Testimony of Charles H. Sooey.)

dered as shown by the statement before me, and which I have examined, would be the sum of $42,-650; that is assuming that Mr. Eliassen pays the $2,650 to local counsel.

Cross-examination by Mr. HENEY.

I arrived at that figure (outside of the $2,650) as follows: I went over this document which was presented to me—I am sorry to say I have read it three times—first a month or so ago, then twice recently. I have taken into consideration the fact that this business was in four jurisdictions, that there has been a very definite distinct accomplishment by the attorney, not only in the matter of the court work and in the preparation of papers, but in matters accomplished for the creditors by negotiations and compromises, which appeals to me very strongly. Then I took into consideration 76 days which he was away from his office.

I have been known to charge $250 a day, I have been known to charge $150 a day, and I have gone for much less.

These 76 days were out of the state. I have taken that into consideration, and I have taken into consideration the fees which would be allowed, possibly allowed by the Superior Court in the administration [252] of an estate and the sale of property such as this by an administrator or an executor; I have taken into consideration the fees allowed attorneys for Receivers in bankruptcy matters. I have called upon the Referee in Bankruptcy

(Testimony of Charles H. Sooey.)

and laid the matter before him and checked up my opinion as to the right amount of fees to be allowed to Mr. Eliassen, had a long conference with him this morning, had this document with me, and went over it; he did not read all of it; he asked me about the accomplishment for the benefit of the creditors, what was done, and he gave me his views on what the fee should be.

The Referee in Bankruptcy I refer to is Judge Kreft. He told me what the federal statute is on the subject of Receivers; and I was very much surprised to learn that where the business is conducted that double the amount may be allowed by the Court; I did not know that. I think he figured on the figures which I gave him that the Receiver's fees would amount to some $7,000 or $7,100, something of that sort. I have not the figures now before me, but he said where the business was conducted, as it was here, that the Court was permitted to allow double that amount to the Receiver. That is as I understood him.

I think he said about $15,000; I am not sure as to that. I had the document with me showing the size of the estate. I think the total assets run $660,000 or $750,000, I have forgotten which; I would have to refer to it. The claims aggregate $749,000, and the assets about $600,000.

Q. Did he tell you they usually did not allow it on the turnover, it was only on the balance?

A. No, we did not go into that; he said that where the business was conducted, that the Court might

(Testimony of Charles H. Sooey.)

allow double the fees. He did not go into that detail, I mean he did not discuss that part of it. I know he figured out about $15,000 for the Receiver's fees.

The practice among attorneys in this state varies, as to [253] their charge *per diem,* where the case may take quite a length of time to try. I believe that when attorneys name a *per diem* charge before Judge Rose, of Los Angeles, they name it much higher than they do before other Judges thinking it will take much less time to try it. I think that they would name a higher *per diem* going before certain Judges, because certain Judges would try it in a very short time, and others would take a longer time to try it.

I do not know what the *per diem* charge is, when the case looks like one that would take several months or six months to try; it depends upon the attorney; I should say anywhere from $150 a day to $500 a day. I think the minimum is $150, for a first class attorney.

Q. Is it not quite customary to make a *per diem* charge of $100 a day for trial work, for a first-class attorney?

A. I know that Joe Campbell took a case of that kind in the Merced Irrigation District against Jim Peck, I think it ran several months, that was several years ago, but he had a contract of $100 a day.

On an estate of $475,000, assuming that the estate under discussion was $475,000, and assuming that it was pending in four jurisdictions just like

(Testimony of Charles H. Sooey.)

the present case, and that the cash actually realized was $475,000, I would make the fee $40,000.

Q. Do you know what it would be in a probate matter? A. I have not figured it up.

Q. It figures $5,580.

A. 7 per cent of the first thousand, and then I presume there would be some extra compensation allowed by the Court in the sale of the property, which I think is 5 per cent in this jurisdiction.

Q. 5 per cent of what?

A. 5 per cent of the sale price.

Q. To the attorney?

A. Yes, I think the probate courts allow a fee of that kind for the sale of property.

Q. I understand the last legislature, or the one before, changed the law so that the sky was the limit in the matter of allowances by the [254] Courts, but it used to be only one-half more than the fee allowed the administrator.

A. I have not had experience, Mr. Heney, and I do not know definitely, but I did make an inquiry from a so-called probate lawyer this morning, and he told me that the Court would allow 5 per cent on the sale price.

Q. I do not think he had Judge Coffey in mind.

A. He did not.

TESTIMONY OF C. M. BRADLEY, FOR PLAINTIFFS.

C. M. BRADLEY, called and sworn as a witness for the plaintiffs, testified, in substance, as follows:

Direct Examination by Mr. CROSBY.

I live in San Francisco; am an attorney at law; have been an attorney at law 24 years; am admitted to practice in all of the courts of the state of California, of the United States courts in the state of California and elsewhere, and the United States Supreme Court.

I do not know Mr. Eliassen.

I have read the statement, identified as Receiver's Exhibit No. 2 in this proceeding, which was submitted to me. I have also examined the additional statement to the effect that Mr. Eliassen necessarily employed local counsel in the three northern jurisdictions, and incurred an obligation to pay them the reasonable value of their services in the aggregate sum of $2,650.

Q. What, in your opinion, would be a reasonable fee to be awarded to Mr. Eliassen, the attorney mentioned in that statement, for the Receivers in this case?

A. Well, I should say from $25,000 to $30,000. Before I had this memorandum here, I had in mind that that statement showed the employment of local counsel, and I was not advised as to whether or not this estate was to pay that, or whether Mr. Eliassen was to pay it.

(Testimony of C. M. Bradley.)

Q. Mr. Eliassen was to pay it; that is the understanding. [255]

A. That would be my best opinion and judgment about it, from $25,000 to $30,000.

(No cross-examination.)

TESTIMONY OF PHILLIP A. HERSHEY, FOR PLAINTIFFS (RECALLED—REDIRECT EXAMINATION.)

PHILLIP A. HERSHEY, recalled as a witness for the plaintiffs, testified, in substance, as follows:

Redirect Examination by Mr. CROSBY.

The witness identified five separate documents, purporting to be Receiver's reports in this matter, dated respectively June 30, 1926, July 31, 1926, August 31, 1926, September 30, 1926, and October, 1926, as the reports referred to in the testimony given by the witness, when on the witness-stand a few days ago, and which the witness prepared as the account in this matter, from time to time, beginning with June, 1926, and ending in October, 1926.

Copies of those reports were sent to McManus, Ernst & Ernst and to Arthur F. Gotthold, Co-receiver in New York City; and the originals were delivered to Mr. Lieurance.

Each of those reports was prepared right after the close of the month, and was sent on to New York just as soon as finished, after the close of the different months, respectively. With the exception

(Testimony of Phillip A. Hershey.)

of the first report, I would say that copies of these reports were sent on to New York approximately fifteen days after the close of each of the months respectively. With the exception of the one dated June 30, I think they were sent to New York within fifteen days after the close of the month to which they refer. I believe the first report, dated June 30, was sent on approximately August 21.

The reports identified by the witness were then introduced and received in evidence and were identified as exhibits for plaintiff, Nos. 3, 4, 5, 6 and 7. (Observe that the first two of these [256] numbers duplicate numbers already assigned to exhibits; but the other exhibits were designated as Receiver's Exhibit 3 and Receiver's Exhibit 4; while these are designated as exhibits for plaintiff; and this will serve to distinguish them notwithstanding the duplication of the numbers.)

I have gone into the group of vouchers which are here in this Court, in connection with this business, to find the voucher referred to by Mr. Heney, having to do with transportation expenses and traveling expenses. I found it this morning. That is a voucher having to do with an expenditure of $806.68. There is a check for that amount drawn in favor of Mr. Lieurance. Attached to that voucher is a statement of the amounts.

(Counsel for plaintiff then offered to read the voucher into the record, but counsel for the objecting creditors stated that he desired to cross-examine

(Testimony of Phillip A. Hershey.)

the witness concerning it before it was read into the record.)

Cross-examination by Mr. HENEY.

The itemized statement, which appears to be on a separate sheet of paper, was attached on the 20th of August, 1926. In other words, this yellow sheet you see here is a duplicate of a remittance advice telling the party to whom it is being sent,—what items it is paying. To that duplicate remittance advice is attached a statement. There it is. (Indicating.) We sent a notice to the Western Dry Goods Company that we are paying the following bills, itemizing them, showing the discount and showing the total net; and attached to that the invoices which it pays. Likewise in this case we did the same thing.

The document referred to in the testimony of the witness was left in the custody of the Court. [257]

TESTIMONY OF EDWARD R. ELIASSEN, FOR PLAINTIFFS (RECALLED—CROSS-EXAMINATION).

EDWARD R. ELIASSEN, witness for the plaintiffs, recalled for cross-examination by Mr. HENEY.

I do not recall the date on which I prepared the petition for allowance on account, for the receivership. My recollection is that it was presented on the 10th of December here in San Francisco.

I recall very distinctly the conference I had in

(Testimony of Edward R. Eliassen.)

Mr. Kirk's office, when Mr. Lieurance, Mr. Kirk and myself were there together. That was on the preceding day; it was on the 9th of December. My recollection is that it was in the early part of the afternoon; somewhere around 2 o'clock; I may be mistaken. As to the time that I left there that day; if I knew when the meeting was held, I could give approximately the time, because the meeting did not last, I believe, more than half an hour. If the meeting was held at 2 o'clock, I would say we were through by 2:45 anyway at the latest.

I don't recall whether I had with me the petition for the allowance on account for Mr. Lieurance as Receiver and myself as attorney, at the time I was in Mr. Kirk's office; but I don't think I had it with me.

Q. What, if anything, was said by you or Mr. Lieurance to Mr. Kirk or to Mr. Moore in that interview about filing a petition for allowance of Receiver's fees and attorney's fees? [258]

Mr. CROSBY.—Pardon me a minute, Mr. Heney and your Honor, it appeared to me at the outset of this hearing that probably that phase of the pleadings was not to be gone into. We have no objection to it as far as we are concerned, but his Honor made some comment about there being some matters here which really were not before him. Did you have reference to that phase of it, your Honor,—on this pleading, your Honor?

The MASTER.—It seems to me that all the conferences and negotiations, except so far as they

(Testimony of Edward R. Eliassen.)

enter into the question of services, were not in issue,—were not an issue we have any interest in here. The question is, What is the proper fee for Mr. Eliassen's services? I myself do not see the materiality of the particular matter under investigation, but I shall allow it if Mr. Heney feels it will help me any.

Mr. HENEY.—I feel it is proper cross-examination and their version is set up in Mr. Lieurance's answer to our objection.

The MASTER.—I am aware of that, and there are issues taken on a great many matters which it seems to me are of no importance,—all these conflicting versions of what happened in various negotiations. I shall think about it when I come to decide the case.

Mr. HENEY.—The only materiality I feel it has is, it is cross-examination and has as such a bearing on the weight of the testimony given by Mr. Eliassen and Mr. Lieurance respectively in regard to the value of the services.

The MASTER.—You may proceed.

A. Now, Mr. Heney, there was quite a lengthy discussion at that meeting. Mr. Kirk, Mr. Moore, Mr. Lieurance and I were present,—I don't think anyone else,—during most of the time. Mr. Moore left before the meeting was over.

It had been called to our attention that the Receiver in New York, Mr. Gotthold, and McManus, Ernst & Ernst, the attorneys, were about to apply for allowances on account. They had filed a peti-

(Testimony of Edward R. Eliassen.)

tion, our information was; and Mr. Kirk, I think, had the same information; in which the attorneys asked for an allowance of $10,000 on account. [259]

Efforts had been made to or by several of the creditors and others a day or two before to ascertain what the probable allowances on account would be in the west—in the western jurisdictions; and at that meeting Mr. Kirk and Mr. Moore wanted to find out from Mr. Lieurance and me what allowances we expected to receive at that time.

It was conceded that that was the time to find out,—what the cost at that time would be; and that before the hearing on the application in New York took place something definite ought to be obtained here in the way of an idea for the creditors or Creditors' Committee, as to what the whole thing was going to cost.

Mr. Lieurance had answered several inquiries by letter and by wire, stating that he desired to leave this entire matter to the Courts,—the matter of the fixation of the allowances; and both Mr. Lieurance and I were asked at this meeting if it was still our attitude,—they had been kept informed,—and we said it was; that we were not prepared to state just what we should receive and were willing to leave it entirely to the discretion of the Courts.

Then followed a discussion as to a telegram which should be sent east, I think, to Mr. Fraser, the chairman of the New York committee; and Mr. Kirk called in a stenographer, and started to dic-

(Testimony of Edward R. Eliassen.)

tate a telegram; and suggestions were made from time to time by others at the meeting; and at last a telegram was prepared; and Mr. Moore left before his signature was on it, but Mr. Moore said it could be sent over his name, that which was sent on. Mr. Moore then left; he said he had to hurry away; and I took up with Mr. Kirk the matter of a stipulation and proposed order which he had sent to me thru the mails, and which he had asked me to sign—the stipulation of which he had asked me to sign.

I told him that the stipulation was all right; that the stipulation provided that the filing of certain claims which Mr. Kirk had caused to be sent to New York might be deemed as filed here in San Francisco. I signed the stipulation in his office, and handed [260] him the copy of the proposed order which he had submitted, and it was all right to me.

Then Mr. Lieurance brought up the matter of the telegram, and said, "Of course it will be sent right away. We don't want those men in the East to get that order before we find out what fees will be allowed here." And then either Mr. Kirk suggested—someone suggested,—anyone—someone of the three,—that we had better go ahead and get our orders as quickly as possible.

I then suggested that we would go out the next morning, and Mr. Kirk nodded his head and said, "Fine." I said, "You will be there, of course, Mr. Kirk?" He said, "I will, if you want me," or

(Testimony of Edward R. Eliassen.)

words to that effect. I am trying to give the substance now. I cannot give it word for word. I said I didn't think it was necessary. It was his privilege, of course. He said, "Well, I don't think it is necessary." I said, "Well, if that is the case, let me take this stipulation out with me to-morrow morning. I will go out there and obtain the order and file the petition, the stipulation and the order"; and he thanked me and said that was fine; and handed me the papers.

Then Mr. Lieurance spoke up and said, "We want to get this over as soon as possible"; and Mr. Kirk wanted to know then, how long it would be before we could get up to the northwest; and one of us suggested that we would go as quickly as possible to go; that we might leave the evening of the following day, and Mr. Kirk talked some more about that being fine; and we left and everything was cordial.

Next morning we went out to court and presented the application and got the order; and I think that that same evening we started for Portland,—started for the north.

I got the order in the morning session, at 10 o'clock. At the time of the talk in Mr. Kirk's office, if there was anything said about the eastern creditors objecting to the $10,000 [261] allowance to McManus, Ernst & Ernst, I do not recall it. It seems to me that the objections were largely the objections of people here; but it may be there had been telegraphic correspondence between the west and the

(Testimony of Edward R. Eliassen.)

east, and so it is possible there was objection there; I don't know. Mr. Moore said definitely that he didn't think they were entitled to such an amount at the time because—Mr. Kirk said the same thing during the conversation,—because very little of the work had been done there; all the concerns were here, all the stores were here; all the work was done here, both by the Receiver and the attorney.

I don't recall that it was said at that time, that the Receiver, Mr. Gotthold, had asked for $10,000, to be divided equally between him and Mr. Lieurance. I know objection was being made to the amount being applied for the attorneys; and the application was also I believe on the Receiver's allowance. The preparation of the telegram sent on that day had for its object the postponement of the matter there until it could be determined what allowance would be made.

My recollection is that Mr. Lieurance and I left for the north at about 7 o'clock in the evening of December 10; we went by train; Mr. Lieurance went on the same train with me, on that first trip.

Mr. Lieurance went out to Judge St. Sure with me on that morning at the time that I presented the petition for allowance on account. He was present in court and testified before Judge St. Sure.

The substance of his testimony was as follows: he was asked by the Judge just what—the Judge asked me first what the entire proceeding was; he wanted to get an idea of it; and then I asked a number of questions of Mr. Lieurance, it was upon

(Testimony of Edward R. Eliassen.)

his appointment and what had been done; and the Judge asked him a number of questions—quite a few questions. I know Mr. Lieurance,—my recollection is that he testified quite fully at the time; but I would not [262] attempt to relate now what the testimony was. My recollection is that I asked him how much he wanted on account at the time, and that his answer was, "That I will leave entirely to the discretion of the Court," or words to that effect.

Q. What was said—in testifying what was said by Mr. Lieurance, if anything, to give Judge St. Sure any idea of what Mr. Lieurance did, when and how he thought the compensation ought to be fixed?

A. I really cannot recall that, Mr. Heney.

Q. How was it fixed, do you know? On a percentage basis, or otherwise?

A. I don't recall that either. I recall that the question of percentage arose in several of the courts, but I do not recall now what courts. I don't think tho,—well, I don't know.

Q. Judge St. Sure was informed that McManus, Ernst & Ernst were asking $10,000 in New York,—wasn't he? A. Yes, sir, he was.

Q. And you advised him that you had performed practically all the work?

A. I didn't put it that way.

Q. The greater part of the work?

A. I let him know we had four ancillary juris-

(Testimony of Edward R. Eliassen.)

dictions here, and the stores were here, and that came out in Mr. Lieurance's testimony.

Q. Did you inform him that some of the large creditors were objecting to the allowance of $10,000 as to McManus, Ernst & Ernst as excessive?

A. I don't recall, Mr. Heney, whether I said that or not. I don't recall I knew that at the time; but I do recall—

Q. (Interrupting.) You knew that Mr. Moore was objecting to it?

A. Yes, sir; I knew Mr. Moore wanted to have the matter postponed until he could find out what was to be allowed here.

Q. Didn't he state that he considered it was excessive, what McManus, Ernst & Ernst were asking?

A. Yes, sir; I think he did. I think that was the concensus of opinion in the office there.

Q. You knew Mr. Moore was one of the largest creditors—$29,000.?

A. Yes, sir; he was one of the largest. [263]

Q. And also knew he was a member of the Creditors' Committee, of the New York Creditors' Committee?

A. I believe I did; and also of the Western Committee.

Q. Did you tell Judge St. Sure that Mr. Moore was objecting to the $10,000, as being excessive?

A. I don't recollect, at this time, whether I did or did not; but my impression is that I didn't. I didn't think of it at the time. I didn't think of it.

Mr. Lieurance has mentioned on numerous occa-

(Testimony of Edward R. Eliassen.)

sions, that he considered the only fair way of fixing his fee was on a percentage basis, on the total amount of money; but I couldn't pick out the occasion when he did speak of it; it is likely that he did speak of it at this time before Judge St. Sure. In all of these percentage conversations, Mr. Lieurance mentioned 5% as the percentage which he thought was fair.

Q. Upon the turn-over?

A. That was never mentioned, whether it was the turnover or on the gross sales, or on the net sales, so far as I can recall; but he did have in mind 5%; I know that; and I think he still has that in his mind.

At that time, I don't think there had been anything said about Receiver Gotthold being paid only in the New York jurisdiction, and Receiver Lieurance being paid for the services performed in the western jurisdictions. I think that came up afterward. Of course, that was spoken of a number of times.

I believe Mr. Lieurance went with me north on the same train, on the 10th of December, after I secured this order here. We first went to Portland. The application was not made in Portland upon our arrival there, because we found that Judge Bean was sitting in court in another division; I think he was down at the capital. So we went from Portland to Spokane; and the next application was made at Spokane after this one at San Francisco.

I have a record of the date when I made the ap-

(Testimony of Edward R. Eliassen.)

plication in Spokane; it was December 14, 1926. I was quite sure that it was in [264] the morning, 10 o'clock; and we finished in the morning. Mr. Lieurance testified there. I don't recall whether Mr. Lieurance said to the Court there, in substance, that he thought the only fair way or method of fixing the compensation for the receiver was to pay a percentage, and that in his opinion it should be 5%; my impression at the present time is that he did mention that.

We left Spokane that night for Seattle,—the first train we could get out of there was a night train. The train arrived in Seattle about 8 in the morning, and I am satisfied that we arrived at that time; that was on December 15. I presented the matter in Seattle on the same day, the 15th.

Q. Do you remember what time of day it was?

A. The best of my recollection is it was in the morning at 10 o'clock, but we had to wait several hours there in Judge Neterer's court, which took place in the afternoon, so I would not be positive about that. The hearing took place on that day in Seattle tho.

Mr. Lieurance testified before Judge Neterer, in much the same way. It is my recollection that he testified in substance that he ought to be paid on a commission basis of 5%.

We left Seattle, that afternoon, about 5 or 6 o'clock, for Portland. While in Seattle we received a telegram from Mr. Kirk.

(Testimony of Edward R. Eliassen.)

We got to Portland on December 16, and presented the matter there on the same day, December 16; my recollection is that it was in the morning at 10 o'clock.

Mr. Lieurance testified in the matter there before Judge Bean. He testified there in substance that in his opinion the only fair way to compensate him was to pay him by a percentage, on a percentage basis of 5% which was the least it should be.

The telegram received from Mr. Kirk in Seattle was then produced, and was offered and received in evidence, but instead of being identified as an exhibit, with the consent of all parties it was read into the record, and is as follows: [265]

"WESTERN UNION TELEGRAM.

26H F 48 4 EXTRA VIA H

San Francisco, Calif., 243P
Dec. 15, 1926.

E. R. Eliassen or A. F. Lieurance,
Seats 17–19 Car 125 Great Northern leaving—
leaving 430 PM Date Seattle, Wash.

In view of communication received by Walton Moore from Frazier, Chariman, New York Creditors Committee, it is highly desirable that you should not apply for receivers allowances or attorneys fees in Western jurisdictions until whole subject matter can be again discussed here upon your return.

JOSEPH KIRK, 322P"

Before leaving San Francisco, I saw the telegram

(Testimony of Edward R. Eliassen.)

dated December 6, 1926, from McManus, Ernst & Ernst to Mr. Lieurance. I believe that I saw all telegrams that came from Ernest & Ernst; but I am positive that I saw the telegram of December 6, 1926 above mentioned. (By consent of all parties, the telegram referred to was then read into the record, and is as follows:)

"WESTERN UNION.

A142 F YA 40

New York, N. Y., 1125A Dec. 6, 1926.

A. F. Lieurance, 1201 Central Bank Oakland, Calif.

We are applying today for order declaring dividend forty per cent, and also for allowances on account to receivers and ourselves. This is without prejudice to and cannot jeopardize your application in West for allowances to ancillary receivers and Eliassen.

McMANUS, ERNST & ERNST. 901A."

Thereupon, a telegram from McManus, Ernst & Ernst to A. F. Lieurance dated December 7, 1926, was offered and received in evidence, and was read into the record, as follows:

"WESTERN UNION.

A452F XD 285 Blue 1/60

New York, N. Y., 722P Dec. 7, 1926.

A. F. Lieurance, Esq., Central Bank Bldg., Oakland, Calif.

Order entered today by Judge A. N. Hand as

follows: 'This cause having duly come on to be heard on this seventh day of December, 1926, on the third report and petition of the receivers herein, and after hearing Irving L. Ernst, Esq., of counsel for the receivers, now, on motion of McManus, Ernst & Ernst, attorneys for the receivers, it is hereby ordered and decreed, First, that all debts entitled to priority for which proofs of claim have been filed where such proofs of claim are necessary, be paid in full. If the receivers doubt the validity of any priority claims filed, the validity of such claims will be determined in the manner hereinafter set forth. Second: that a first dividend of forty per cent be declared and paid to all creditors whose claims have been filed and allowed by [266] the receivers herein, and the receivers are hereby authorized to accept proofs of claim in due form from creditors whose claims appear on the books of the defendant to be valid, notwithstanding that the time limited for such filing has expired. Third: Michael J. Cardozo, Esq., is hereby appointed special master to hear the objections filed by the receivers to any and all claims filed, or that may hereafter be filed and to take the testimony offered by the parties, and to report the same to this court, with his opinion thereon.'

At request Creditors' Committee no allowances were fixed for receivers or counsel until receiving some indication from you what aggregate amount you and Eliassen will request from Western juris-

(Testimony of Edward R. Eliassen.)

dictions. Will you please wire us approximately what aggregate allowances will be so requested.

McMANUS, ERNST & ERNST. 523 PM."

I believe that before leaving here, I saw the telegram from A. V. Love to Mr. Lieurance, dated December 8, 1926; I do not think there is any question about that.

The telegram referred to was then offered and received in evidence and was read into the record as follows:

"WESTERN UNION.

A29 F ZC 40 NL

Seattle, Wash., Dec. 8, 1926.

A. F. Lieurance, 1401 Central Bank Bldg., Oakland, Calif.

William Frazer, Chairman Creditors' Committee wants my views by wire on full and final compensation for Ernst, Gotthold, Eliassen and yourself. Judge Hand has asked for our views and suggestion. Please wire me amounts you and Mr. Eliassen expect.

A. V. LOVE, 420A Dec. 9."

The attention of the witness was then directed to the telegraphic answer by Mr. Lieurance to McManus, Ernst & Ernst, dated December 8, 1926, and he was asked whether Mr. Lieurance showed the witness this telegraphic answer before they left here for the trip north, and the witness answered: "I don't know when it was received, Mr. Heney, but I saw the telegram; I am satisfied I saw it immediately afterward."

(Testimony of Edward R. Eliassen.)

Telegram referred to was then offered and received in evidence and was read into the record as follows:

"WESTERN UNION.

EXTRA RUSH

Oakland, California, December 8, 1926. [267]

McManus, Ernst & Ernst, 170 Broadway, New York, City, N. Y.

Replying to your telegram December 7th. No amount on account for attorneys and receivers in ancillary jurisdiction will be suggested by us. However, will ask for allowances on account, but amounts will be left entirely to discretion of courts. Feel this best and most fair method to pursue. Have not slightest idea of what courts will do, but feel they will be fair to both creditors and ourselves.

A. F. LIEURANCE."

I don't recall whether I assisted in preparing that telegram; but I am satisfied that I saw it before it was sent.

At the time we were applying before Judge St. Sure on December 10, there was something said to Judge St. Sure about our intention to apply in each of the other western jurisdictions. I think I informed the Judge at Spokane as to what had been allowed by Judge St. Sure. I know that some of the Judges, whether or not all I cannot recall now, asked what had been done previously, if anything; what had been done in the other jurisdictions. I have a distinct recollection that Judge Neterer

(Testimony of Edward R. Eliassen.)

asked the question, and also that Judge Bean asked the same question; whether Judge Webster did at Spokane I don't know.

In each instance, as we went along, we told them what had been allowed in the other jurisdictions. I didn't tell them the basis on which the allowance for the fee of the receiver had been made in each instance; but when the Judge,—the succeeding Judge—would ask Mr. Lieurance, Mr. Lieurance, would state just what he had said to the others of of the Judges in substance. I do recollect that. In substance or effect, he informed the Judge before whom he then was, that he had made the same statement to the preceding Judge; but he didn't put it that way, of course.

Telegram from Arthur Gotthold to A. F. Lieurance, dated December 8, 1926, was then produced and offered and received in evidence, and was read into the record as follows:

"WESTERN UNION.

A108F XF 19 2A New York, N. Y., 1051A
Dec. 8, 1926.

A. F. Lieurance, 1401 Central Bank Bldg., Oakland, Calif. [268]

I shall be glad to know your views as to allowances to receivers and counsel as soon as possible.

ARTHUR GOTTHOLD. 806A."

I believe I was present when Mr. Lieurance held a telephone communication with Mr. A. V. Love, in response to a telegram of Mr. Love which has

(Testimony of Edward R. Eliassen.)

been read into the record. I don't think that before Mr. Lieurance telephoned to Mr. Love I discussed with Mr. Lieurance the question what the substance of the reply to Mr. Love ought to be. My recollection is that it was Mr. Love who called Mr. Lieurance up. Mr. Love had sent a telegram; there was a telephonic conversation; but who called the other up, I don't recall.

A telegram from A. V. Love to William Fraser, dated December 9, 1926, was then produced; the cross-examination of Mr. Eliassen was temporarily suspended; and,—

TESTIMONY OF A. F. LIEURANCE, FOR PLAINTIFFS (RECALLED — CROSS-EXAMINATION).

A. F. LIEURANCE, witness for the plaintiffs, recalled for cross-examination, testified, in substance, as follows:

Mr. Love sent me the original telegram which you have read into the record. Later he sent me this copy of the telegram of December 9, 1926, from A. V. Love to William Fraser, together with a letter, informing me what had transpired in his correspondence with Fraser or someone in the East. That is how I came in possession of that telegram; Mr. Love sent it to me. It must have come after we had left on our trip north; I could not have received it before. I don't recollect whether he showed it to me while I was up there; if he did, I don't recall it.

(Testimony of A. F. Lieurance.)

The telegram referred to was offered and received in evidence and read into the record as follows:

"WESTERN UNION.

Dec. 9, 1926.

William Fraser,

c/o New York Credit Men's Assn.,

320 Broadway, New York City, New York.

Talked to Lieurance long-distance today. He will not suggest amount of fees. Says will be satisfied with courts order. Think Lieurance's compensation should be greater than Gotthold's, as he has done most of work. Think Ernst suggested fees altogether unreasonable, and that all parties should be satisfied with reasonable fees.

A. V. LOVE." [269]

(Cross-examination of Mr. LIEURANCE continued.)

Referring to the telegram from Walton N. Moore, to William Fraser dated December 9, 1926, Mr. Kirk sent that to me through the mail. I cannot recall when it was. It was shortly after it was sent,—the next day, I imagine; I don't know. That is the telegram which was formulated and dictated in Mr. Kirk's office, at the time I was there.

The telegram referred to was offered and received in evidence and read into the record as follows:

"WESTERN UNION.

December 9, 1926.

William Fraser c/o J. P. Stevens Co.,
23 Thomas Street, New York City.

Further answering your telegram. Receiver Lieurance and attorney intend having each ancillary Western court also order dividend forty per cent. To avoid possible conflict between Eastern and Western Courts as to amounts of allowances to receivers and their attorneys, as Chairman of Creditors' Committee here and member of New York committee, I earnestly request that question of such allowances be deferred for time being, until receivers and attorneys and committees can exchange views and come to some agreement concerning gross amounts to be asked for. Amounts of allowances to receivers and attorneys at this time by Judge Hand may prove unsatisfactory to ancillary courts who may order different amounts resulting in confusion. As you now know from yesterday's telegrams from Lieurance to Gotthold and attorneys McManus and Ernest, receiver Lieurance and attorneys in ancillary jurisdiction intend leaving amounts of allowances to discretion of ancillary courts.

WALTON N. MOORE."

(Mr. Lieurance then produced, for the use of counsel for the objecting creditors, a file containing the whole correspondence between Mr. Lieurance and Mr. Gotthold and McManus Ernst & Ernst.)

TESTIMONY OF EDWARD R. ELIASSEN, FOR PLAINTIFFS (RECALLED—CROSS-EXAMINATION).

Cross-examination of Mr. ELIASSEN (resumed).

Telegram from Arthur Gotthold to A. F. Lieurance, dated December 9, 1926, was produced and shown to the witness, who testified concerning it as follows: I don't recall seeing that before we left here to go north on December 10. Most of those telegrams were sent at night and got to the office the following morning, so that being dated December 9, I could not state whether it was received on that day or not.

There was some discussion between counsel and witness and the Master concerning the dates appearing on the telegram, which [270] indicated that it was sent from New York at 11:12 A. M. (New York time) and was received at Oakland at 8:45 A. M. (Oakland time); and the witness testified: "All I can do is to speculate as to the time I saw the telegrams"; Mr. Lieurance was in the habit of showing me the telegrams as soon as he received them; I have examined hundreds of them.

The telegram referred to was then offered and received in evidence and was read into the record as follows:

(Testimony of Edward R. Eliassen.)

"WESTERN UNION..

A 119 F EP 64

ZA New York, N. Y. 1112A Dec. 9, 1926.

A. F. Lieurance, 1401 Central Bank Bldg., Oakland, Calif.

Suggested interim allowances in New York are ten thousand to receivers to be divided equally. Ten thousand to New York counsel. New York counsel to make no application in ancillary jurisdictions. Figures indicated are satisfactory to court and generally to creditors, but before payment is made we hoped to get some estimate of total allowances so that figure might be kept down to reasonable amount.

ARTHUR F. GOTTHOLD. 845a"

I cannot recall whether or not I had that telegram at the time of the meeting in Mr. Kirk's office on the afternoon of December 9.

A night letter, dated December 10, 1926, from A. F. Lieurance to Arthur F. Gotthold was then shown to the witnesses who testified: I believe that I assisted in the preparation of that. The night letter referred to was then offered and received in evidence and read into the record as follows:

"WESTERN UNION.

NIGHT LETTER

Oakland, California, December 10, 1926.

Mr. Arthur F. Gotthold,

Joint Receiver, R. A. Pilcher Co., Inc.

#27 William Street, New York City, N. Y.

I purposely delayed replying to your telegram of December ninth, requesting aggregate amount of fees to be allowed attorneys and receivers pending result of meeting with San Francisco Board Trade [271] and Walton Moore, held late yesterday afternoon in San Francisco. As previously stated Eliassen and myself feel in fairness to creditors, attorneys and receivers, matter of compensation should be left entirely to courts without suggestion or recommendation on our part as to amounts. This plan will be followed in ancillary jurisdictions, and is supported by Walton Moore, A. V. Love and San Francisco Board Trade. Their views and recommendations in this record were communicated to Mr. Fraser yesterday, by wire, in reply to his request to them for same, as Judge Hand had evidently asked Creditors Committee for recommendations as to aggregate allowances to be made attorneys and receivers. In view of fact that fixation of fees and compensation will be left to courts in Western jurisdictions, it is impossible for me to even guess at amounts which will be allowed. It has been suggested here, and evidently at New York also, that you receive your compensation in parent

(Testimony of Edward R. Eliassen.)

jurisdiction, and I look to courts in ancillary jurisdiction for my compensation. There is no doubt this will simplify matters and keep aggregate amount to be allowed down to reasonable figure, as was suggested at yesterday's meeting. However, no one can foretell how this will work out. Please let me have your views regarding this arrangement. Application for orders to pay forty per cent dividend and allowances on account will be made in Northwest next week.

A. F. LIEURANCE."

Q. What time of day was that telegram sent, do you remember? A. No.

Q. Well, when was it prepared? Was it after you had been before Judge St. Sure?

A. I cannot recall that, Mr. Heney. There is a volume of telegrams and a volume of correspondence. I have not the slightest recollection of when it was drawn up. You ask me the date. Without referring to it I could not remember.

Q. No. But you could tell whether it was on the same day you got your allowance here and started North couldn't you? That would be of some peculiar interest to you. Wasn't it?

A. It must have been, because it was dated that day; yes.

Q. I mean, doesn't your recollection go back so that you remember that on that day Mr. Lieurance did send that telegram, which you helped him prepare?

A. I remember he showed me that telegram, but

(Testimony of Edward R. Eliassen.)

I cannot recall the time, the day or anything about it. I know I have seen that telegram; and I am satisfied that he took it up with me before he sent it off; if that is what you want; but I cannot give the hour, Mr. Heney; and I wager you could not either, if our positions were reversed. [272]

A telegram dated December 15, 1926, from Arthur F. Gotthold to A. F. Lieurance as then shown to the witness, who testified concerning it as follows: I have seen that telegram before. I do not remember whether or not I saw it in Seattle while I was there making these applications for allowances. I do not remember whether or not Mr. Lieurance got a telephone message at Seattle, from the Oakland office, in regard to it. This is the first time I have heard of a telephonic conversation between his office and himself at the time. I don't know of any such.

Q. It was received at his office at 9:37 in the morning of December 15th.

A. It may have been forwarded by the office and embodied in a telegram to Mr. Lieurance during the time we were away. We frequently received telegrams from the office,—many of them.

(It was then stipulated that the telegram just referred to as received at the Oakland telegraph office at 9:37 A. M. on December 15, 1926; and that it was forwarded on the same day by wire to Seattle, in a telegram from an employee in the Oakland office, to Mr. Lieurance.)

(Testimony of Edward R. Eliassen.)

(Cross-examination of Mr. Eliassen continued.) I remember seeing that telegram, and I assume that I saw it in Seattle.

The telegram from the Oakland office to Mr. Lieurance, forwarding the telegram from Gotthold, was offered and received in evidence and read into the record as follows:

"Oakland, California, December 15, 1926.

Mr. A. F. Lieurance, Washington Hotel,
Seattle, Washington.

Wire just received from Gotthold, 'Regret we have had no further word in answer our telegrams and Fraser's letter. Further answering your telegram December tenth, it has not been suggested here that I receive allowance in New York only. I am informed you and Mr. Walter Ernst agreed both of us to apply for allowances in New York and also in each of ancillary jurisdictions in event that separate applications should be made. We are asking Judge Hand for a hearing on Friday reference interim allowances. Shall be glad to know your views before that time.

MARY L. RAEBURN."

(Thereupon, the cross-examination of Mr. Eliassen was again temporarily suspended.) [273]

TESTIMONY OF A. F. LIEURANCE, FOR PLAINTIFF (RECALLED — CROSS-EXAMINATION).

A. F. LIEURANCE, witness for the plaintiff, recalled for cross-examination, testified, in substance, as follows:

The attention of the witness was directed to a telegram sent from Oakland, to Arthur Gotthold, dated December 15, 1926, and signed "A. F. Lieurance"; and the witness testified concerning it as follows: That could have happened. In communicating with Oakland it might have been incorporated with other matters even though I might be in Seattle at the time.

The attention of the witness was then directed to the fact that the telegram contained statements known to the witness personally, viz.: "I have received no letter from Mr. Fraser" and the witness testified concerning it as follows: "When I got this telegram repeated to me I may have instructed the Oakland office in some way. I did it on a number of occasions.

The telegram referred to was then offered and received in evidence and read into the record as follows:

"WESTERN UNION.

Oakland, California, December 15, 1926.

Mr. Arthur F. Gotthold,

Joint Receiver, R. A. Pilcher Co.,

#27 William Street, New York City, N. Y.

Replying your wire December 15th, I have re-

(Testimony of A. F. Lieurance.)
ceived no letter from Mr. Fraser, neither did I write to him. No agreement has been made between Walter Ernst and myself regarding receivers compensation. As wired you December 10th the suggestion was made that you take all of the allowance made in New York, and I take allowance to be made here in West. This is I believe fair and equitable. Does this plan meet with your approval.

A. F. LIEURANCE."

(Cross-examination of Mr. Lieurance continued.) I was in Seattle at the time, and I must have given the instructions here, because Miss Raeburn is a most capable girl; and in many cases like that, knowing the situation and circumstances thoroly, she would probably compose a telegram, which I would give her the substance of.

(Mr. Lieurance questioned by Mr. CROSBY.) I would communicate with Miss Raeburn by wire. That accounts for the telegram, going [274] back to New York on the 15th.

(Cross-examination of Mr. Lieurance by Mr. HENEY resumed.) The telegram that I sent to Miss Raeburn instructing her to send a telegram to Gotthold in my name,—that is, the one received by her should be in the files in my office; there is no question about that; I am looking for it; I don't find it here.

TESTIMONY OF EDWARD R. ELIASSEN, FOR PLAINTIFFS (RECALLED—CROSS-EXAMINATION).

EDWARD R. ELIASSEN, witness for the plaintiffs, whose cross-examination was suspended, resumed the stand, for further cross-examination by Mr. HENEY.

I haven't any idea how Mr. Kirk came to know the number of the seats on the car and the car, on which we were leaving from Seattle. I might say I was somewhat surprised. Of course, it was a matter of no secrecy.

(The attention of the witness was directed to the telegram from Arthur F. Gotthold to A. F. Lieurance, dated December 16, 1926; and the witness was asked whether he recalled seeing that telegram "at or about that time"; and the witness answered:) I remember seeing the telegram; but at what time, I could not say.

The telegram referred to was then offered and received in evidence and read into the record as follows:

"WESTERN UNION.

A201F EJ 63

ZA New York, N. Y., 1143A. Dec. 16, 1926.

A. F. Lieurance, 1401 Central Bank Bldg., Oakland, Calif.

Replying your wire December 15, Fraser's letter should have reached you. My information regarding allowances came from Mr. Walter Ernst. I

(Testimony of A. F. Lieurance.)

regret misunderstanding. Your suggestion as to allowances acceptable to me, but I hope that aggregate of allowances will be kept to reasonable figure. Hearing before Judge Hand set for afternoon of December 17th. Will submit matter to him then.

ARTHUR F. GOTTHOLD. 9:44A."

(At this point, the cross-examination of Mr. Eliassen was again suspended; and)—

TESTIMONY OF A. F. LIEURANCE, FOR PLAINTIFFS (RECALLED—CROSS-EXAMINATION).

A. F. LIEURANCE, witness for the plaintiffs, was recalled, for [275] further cross-examination by Mr. HENEY.

If there had been a telegram from Seattle to the Oakland office, it would not be filed in this file which is in court. It would be filed with private correspondence,—I mean a different correspondence file. We had it here the other day but I didn't bring it back. This file is correspondence between myself and the New York people, and not personal messages going between Miss Raeburn and myself.

The next telegram appearing in this file, from Walton N. Moore to Mr. Fraser, dated December 16, 1926, is a copy that came from Mr. Kirk or Mr. Moore. I am inclined to think it came from Mr. Kirk; that is, a copy was sent to me. We were in Portland the 16th; this telegram came from my office no doubt.

TESTIMONY OF EDWARD R. ELIASSEN, FOR PLAINTIFFS (CROSS-EXAMINATION RESUMED).

Cross-examination of Mr. ELIASSEN (Resumed.)

Mr. Lieurance and I had a talk with Mr. Kirk and Mr. Moore at Mr. Kirk's office, shortly after our return from Portland,—after December 16. The telegram last above mentioned was not before us at the time of the meeting just mentioned; but I know that we saw it before that time. Our information at the office was it had been forwarded by Mr. Kirk.

The telegram just referred to was then offered and received in evidence and read into the record as follows:

"WESTERN UNION.

Willam Fraser,
c/o J. P. Stevens Co.,
23 Thomas Street, New York City.

Telegram received. To my utter astonishment I received following telegram to-day from receiver Lieurance at Portland. 'Work completed here this morning. Orders obtained all jurisdictions pay 40 per cent dividends. Allowance to attorney California ten thousand. Spokane twenty-five hundred. Seattle five thousand. Portland ten thousand. Total twenty-seven thousand five hundred. Allowance to receivers California ten thousand, divided seventy-five and twenty-five per cent. Spokane five thousand division to be made at final hearing. Seattle thirteen thousand, divided twelve and one.

(Testimony of Edward R. Eliassen.)

Portland fourteen thousand five hundred, divided thirteen five and one. Total forty-two thousand five hundred. Phoned above information to Mr. Love this morning. Will be home Saturday."

Receiver Lieurance and his attorney were present when telegram of December ninth to you was prepared and consented thereto. In view [276] of this fact we consider applications for allowances in Western jurisdictions which were made without any notice to Creditors Committee here as being unwarranted, and in violation of understanding stated in telegram of December ninth. We contemplate making immediate application to Western courts to set aside the allowances as excessive and exorbitant and give creditors full opportunity of being heard with respect to the allowances. Will your committee join in making this application, or request to Western courts and bear their share of expenses and fees incident thereto.

WALTON N. MOORE."

The telegram from Fraser to Walton N. Moore, dated December 16, was then produced; (the witness Lieurance stated that he supposed this copy of the telegram came from Mr. Moore, that all of those copies of telegrams came from Mr. Fraser or Mr. Moore, at about the time of the dates of them; "I suppose they were transferred quickly").

The telegram last referred to was then offered and received in evidence and read into the record as follows:

"New York, N. Y., Dec. 16

Walton N. Moore, care Walton N. Moore D. G. Co.,
San Francisco, California.

Hearing Friday before judge on allowances. Unless hear from you by wire will assume no change in previous stand.

WILLIAM FRASER."

The objecting creditors then offered in evidence a letter from Arthur F. Gotthold to Mr. Lieurance, dated December 18, 1926, which letter was received in evidence, and read into the record as follows:

"GOTTHOLD, PITKIN, ROSENSHON & TRAVIESO,

Counsellors at Law,
27 William Street, New York.

AFG./HAP. December 18, 1926.

Re: R. A. Pilcher Co.,

Dear Mr. Lieurance:

Mr. Irving Ernst and I appeared before Judge Hand late yesterday afternoon. Members of the Creditors' Committee and representatives of large creditors were also present.

Mr. Fraser read a telegram from Mr. Moore quoting your telegram to him. This was the first knowledge I had that orders for distribution and for allowances had been made in the four Western jurisdictions. The result of making separate applications is just what I feared, namely excessive allowances.

In view of the telegrams passing between us I

am somewhat puzzled as to why you included me in your applications. As I agreed [277] to apply only in New York the amounts awarded me in California, Oregon and Washington can, of course, be eliminated.

It is particularly unfortunate that so much of the assets should be spent for the cost of administration in view of the notice of the result of sales sent to creditors and signed with both our names. I saw a copy of this yesterday for the first time. I am afraid that creditors would gather from it the impression that they would receive much larger dividends than can be paid.

The result of the hearing was that *ad interim* allowances, of $7,500 to Messrs. McManus, Ernst & Ernst and of $5,000 to me, were made and the creditors here decided to cooperate with the Western creditors in an effort to have the allowances in the Western jurisdictions reconsidered and materially reduced. On the information available here, we all thought these allowances very high.

In view of the splendid work you have done in disposing of the stores it would be too bad to have a controversy over a matter of this kind. I hope that when you have fully considered the matter you will feel like consulting with the Creditors' representatives and voluntarily agreeing to a reduction to more reasonable figures. My compensation, as I have said, is out.

Please let me hear from you about this as soon as you can and also about your plans for the pay-

ment of the dividend. How are you coming along with the landlords and the adjustments with the purchasers?

Faithfully yours,
ARTHUR F. GOTTHOLD.

A. F. Lieurance, Esq.,
1401 Central Bank Bldg.,
Oakland, California."

The objecting creditors then offered in evidence the telegram from McManus, Ernst & Ernst to A. F. Lieurance, dated December 18, 1926, which telegram was received in evidence and read into the record as follows:

"WESTERN UNION.

New York, N. Y., 238P Dec. 18, 1926.

A 292F YH 40 Blue

A. F. Lieurance,
3840 Grant Avenue, Glencourt 2362,
Oakland, Calif.

Judge Hand awarded the following allowances to-day on account to us: seventy-five hundred. To Mr. Gotthold, five thousand. Mr. Hershey promised to send on money equal to one-half of these allowances. Will you please transfer the necessary funds.

McMANUS, ERNST & ERNST."

The objecting creditors then offered in evidence a telegram from A. F. Lieurance to Arthur F. Gotthold, dated December 20, 1026; which telegram was

received in evidence and read into the record as follows:

"WESTERN UNION.

Mr. Arthur F. Gotthold,
Joint Receiver R. A. Pilcher Co.,
#27 William Street, New York City, N. Y.

Dec. 20, 1926. [278]

I acknowledge receipt of your telegram of December 16th, stating that suggestion contained in my telegram to you of December 15th, that you take all receiver's compensation allowed in New York, and I take all allowances made to receivers in ancillary jurisdictions is acceptable to you. I hereby agree to this arrangement. Pursuant to this agreement between ourselves I am sending you air mail to-day assignment of any fees to which I am entitled in the New York jurisdiction, and would suggest you mail me an assignment of your interest in any allowances made to receivers in Western jurisdictions. Payment of forty per cent dividend to creditors starting to-day.

A. F. LIEURANCE."

The objecting creditors then offered in evidence a telegram from Arthur F. Gotthold to A. F. Lieurance, dated December 21, 1926; which telegram was received in evidence and read into the record as follows:

"New York, N. Y., December 21, 1926.

A. F. Lieurance, 1401 Central Bank Bldg.,
Oakland, Calif.

Your telegram December 20th received. Your

(Testimony of Edward R. Eliassen.)

telegram December tenth suggested I receive compensation here and you in West. I accepted this arrangement and therefore did not apply for allowance for you here, and am surprised you applied for allowances for me. I consider assignment of allowances improper. Wrote you December 18th air mail that I consider Western allowances too high, and that those made me should be eliminated. If paid they will be immediately deposited in receivership account here. Are you paying dividend to all creditors or remitting funds here for payment to Eastern creditors.

ARTHUR F. GOTTHOLD."

Cross-examination of Mr. ELIASSEN (Resumed).

At the time that I made the trip to New York, when the depositions of Walter Ernst and Mr. Fraser were to be taken, I did not go on any other business than that of taking those depositions. I did not learn, before leaving San Francisco, that William Fraser was in Europe.

I recall a conversation with you (Mr. Heney) on the street-car going down town; and I remember asking what testimony was expected from those witnesses, and suggested that possibly we could stipulate what their testimony would be; but I gathered from your (Mr. Heney's) talk, that you didn't know exactly what they intended to prove by these witnesses. You may have said that Mr. Fraser was not there, but I don't recall that. I was somewhat surprised when [279] I got to

(Testimony of Edward R. Eliassen.)

New York, to find that he was in Europe and had been there for over a month. I have no recollection that you said that Mr. Fraser was in Europe and would not be back by the date for which the deposition was set; but if you recall that, I will say that I know you said it; but I have no recollection of it now.

Redirect Examination by Mr. CROSBY.

Mr. Fraser was not in New York, and his deposition was not taken, but the depositions of Mr. Ernst and Mr. Arthur F. Gotthold were taken on the day fixed in the notice. Their names appeared in the notice, as witnesses whose depositions would be taken. The time was fixed (and stated in the notice) on which the depositions were to be taken. The notice was left in my office while Mr. Lieurance and I were in the northwest in the matter of the hearing of the final accounts, by reference to my statement, which I have now before me. I can tell when I arrived from that trip, arrived back in Oakland. I arrived back in Oakland on August 3d; and the time fixed for the taking of the depositions was August 16th, at New York.

I did not have any talk with Mr. Heney (after receiving this notice) concerning the proposition of questions and answers to be prepared here, and submitted there; but I did before that time; whether it was in that conversation I had with Mr. Heney or at some other time,—I tried to find out whether or not we could stipulate, and as to whether or not we could submit the matter on written interroga-

(Testimony of Edward R. Eliassen.)

tories. Mr. Heney thought that Ernst's testimony would relate only to the Hershey matter. (Mr. Heney then stated in the record that he did not know at that time what Mr. Fraser's testimony would be, or what Mr. Gotthold was expected to testify to.)

In order for me to intelligently cross-examine those people whose depositions were being taken, I felt that it was necessary for me to go personally; and I took back a great bulk of data, and appeared at the time, and participated in the taking of the depositions of those two gentlemen. [280]

Q. Now, in the matter of the presentation of the applications to the various courts for these interim allowances: When you presented those applications, did either you or Mr. Lieurance state to the Court at the outset, in the matter, what you considered or either of you considered should be allowed?

A. No; we refrained from doing that very thing.

Q. Just state to his Honor what transpired in a general way which went into the record at all, any reference to amounts, either by you or Mr. Lieurance?

A. My recollection is, that in all jurisdictions a statement of the matter being presented was first made by me,—a statement that an order had been made in New York permitting the payment of a dividend of 40%; stating that the matter of allowances to the attorneys had been deferred, altho applications had been made for allowances; stating that we desired upon the showing—I don't recall

(Testimony of Edward R. Eliassen.)

whether I read the report or stated the substance of the report to the Court here in San Francisco; I think I stated the substance of the report, showing there was ample money on hand to make the payment proposed as to the dividend. I then put Mr. Lieurance on the stand and questioned him concerning the services rendered by him up to that time, asking him about the report which he had filed; whether or not it was true, and propounded such questions as I thought would draw from the witness the facts which we expected to present to the Court. We aimed to give the Court a good idea of just what had transpired, I remember, in this jurisdiction.

The Judge asked Mr. Lieurance what he expected, and Mr. Lieurance reiterated what he said in Mr. Kirk's office and had said in his telegrams; that that was a matter he wanted to leave entirely —I don't know whether he used the word discretion,—entirely to the Court, without naming any amount. I do recall the Judge asked him if he had any idea; and I do recall he stated, and I speak now of this jurisdiction, that he had no idea, and that Mr. Lieurance was [281] then pressed, and he said something; whether he said that he felt it would be fair to determine the matter of his allowance or the matter of his fees upon a percentage basis, I don't know. I don't think he did.

Q. That was in this jurisdiction?

A. That was in this jurisdiction; yes. In the other jurisdictions practically the same procedure

(Testimony of Edward R. Eliassen.)

was gone thru with. We informed the Court in each succeeding jurisdiction of what had taken place in the previous applications, in the matter of the previous applications in the courts we had already visited; and we also informed the Courts of what had been done in San Francisco and in Portland and in Spokane,—no; Portland was the last on this trip,—in Seattle and then in Portland.

In each case the Judge insisted upon knowing what Mr. Lieurance's idea was; and I know that he was rather loath, very loath, to give it; but he did suggest to two or three of the Judges he felt that perhaps a percentage basis was the basis upon which to make the compensation; and I recall this, that Judge Webster thought it was perfectly fair, and wanted Mr. Lieurance to state what percentage. He was pressed on that, and at last suggested that he thought 5% would be fair, and mentioned something about a real estate broker being given 5%. I know that after being pressed he mentioned 5% in Judge Neterer's court in Seattle, and I know that Judge Neterer commented very favorably on what he had done, and also gave it as his opinion that that method of calculation or basis was a very fair one.

In Portland Judge Bean took the same attitude, and made the same comment, that he thought it was a fair way of determining just what should be paid. I do know that in each instance that Mr. Lieurance was very hesitant about stating what his idea was, —whether he had any idea on that or not I do not

(Testimony of Edward R. Eliassen.)

know; but he did state finally he thought a percentage basis would be the proper basis of calculation. [282]

Q. In the first instance, when questioned by the Court, was anything said by Mr. Lieurance,—anything said about it being left to the judgment of the Court? A. Absolutely, yes.

Q. In every instance? A. In every instance.

Q. How about your own compensation as to these allowances made on account?

A. Nothing was said about any basis. I did tell Judge St. Sure, that an application had been made by the attorneys at New York for $10,000, on account. He had before him what had been done, and he fixed the allowance at $10,000 without any further comment; and then, when he fixed Mr. Lieurance's compensation, he didn't consider any percentage basis; he just felt the Receiver should receive the same amount.

Mr. HENEY.—That is stating a conclusion, Mr. Eliassen.

A. It is. Lawyers make very poor witnesses.

Examination by the MASTER.

Q. Nothing was said about a percentage?

A. Nothing was said about a percentage at that time, as I recall it.

Q. What was the odd figure in the Portland hearing of the Receiver's percentage, ending in 51 cents or some such figure; on what basis was that calculated?

(Testimony of Edward R. Eliassen.)

A. Judge Bean calculated 5% on the gross sales.

Redirect Examination Resumed by Mr. CROSBY.

Q. 5% on what?

A. On the gross sales; sales of merchandise over the counter, which amounted to almost half a million dollars, and the prices the stores brought, $257,000 odd dollars; $257,600.

At this point counsel for plaintiffs asked counsel for the objecting creditors, "just what your purpose is in offering those telegrams"; and counsel for the objecting creditors answered that his purpose as to "part of them" was as follows:

As part of the cross-examination of the witness; and it is on the theory, that if the Master interprets them as I do it will lessen the weight to be given the testimony of the witnesses; and, secondly, on the proposition, that if [283] the facts are as we shall contend, then certainly Mr. Eliassen is not entitled to any compensation for resisting these objections and neither is Mr. Lieurance, or for time expended in resisting them.

Examination of Witness Eliassen by the MASTER.

These orders of allowance made in the various jurisdictions to the Receiver, and to myself as his attorney, were not set aside. By stipulation, the amounts on account were reduced, so that Mr. Lieurance has received now, $15,000 on account, and I received a like sum on account. Those stipulations are on file, because orders have been based upon them; and as I suggested to Mr. Heney last

(Testimony of Edward R. Eliassen.)

week, the amount we are asking for now is the fixed fee, but, of course, credit is to be given if it exceeds $15,000—for the $15,000 on account.

At this point, by consent of counsel and with the permission of the Court, counsel for the objecting creditors was permitted to call a witness for the objecting creditors, concerning a formal matter, and with the understanding that the plaintiff would resume the introduction of their evidence after the completion of the testimony of the witness for the objecting creditors.

TESTIMONY OF F. A. BENNETT, FOR PLAINTIFFS.

F. A. BENNETT, called and sworn as a witness for the objecting creditors, testified, in substance, as follows:

I am manager of the Western Union Telegraph Company, at Oakland, California; and have been in that position three and one-half years.

(The telegram dated December 10, 1926, from A. F. Lieurance to Arthur F. Gotthold, commencing with the words, "I have purposely delayed," and which was heretofore read into the evidence, was shown to the witness, and the witness testified concerning it as follows:)

That telegram (night letter) was filed in Oakland at 6:02 P. M., December 10, 1926. This is the original telegram, which I have produced in compliance to your summons.

(No cross-examination.) [284]

TESTIMONY OF EDWARD R. ELIASSEN, FOR PLAINTIFFS (RECALLED — REDIRECT EXAMINATION).

EDWARD R. ELIASSEN, witness for the plaintiffs, recalled for further redirect examination by Mr. CROSBY.

In making my applications to the Court for interim allowances to myself and Mr. Lieurance, I did not intend to induce the Court to understand and believe anything contrary to, or other than, what the facts were.

I did not conceal any facts from the Court upon any of these applications.

Recross-examination by Mr. HENEY.

Q. Did you tell Judge Webster, or the Judge at Seattle, that the application for the allowances were being made upon an understanding with the Creditors' Committee that neither Mr. Lieurance or yourself would make any suggestion or recommendation whatsoever in regard to the amount thereof?

A. The statement that we would not make any suggestion was made to all the Judges.

Q. What did you say to them?

A. I do not recall the language, Mr. Heney; but I know we did say,—we said we wanted to leave it to the discretion of the Court,—whatever the Court felt was fair in the premises would be satisfactory to us. That was made clear to all of the Judges.

(Testimony of Edward R. Eliassen.)

Q. Did you state to the Judges that you had an agreement with the Creditors' Committee, that you would not make any suggestion or recommendation, neither you or Mr. Lieurance, as to the amount to be allowed either of you,—and your failure to do so would be in violation of that agreement?

A. I don't recall I put it that way. I don't recall having mentioned any agreement made with any committee.

I cannot say that on December 14, 1926, when I was at Spokane, I knew that the creditors were objecting to the amount that was being asked for in New York, and were earnestly endeavoring to find out what the total amount was going to be, in order to find out whether they wanted to object to it or not. I did know they wanted [285] to know what the entire amount was going to be before the hearing of that application of McManus, Ernst and Ernst there. The feeling, as it was explained to us was, that those people were asking for entirely too much, because they had done so little; that the work was being done out here; the business was here; and they felt those people should not get the major portion of the fees.

Q. But you didn't think the creditors had any objection to any amount which you folks might get?

A. We didn't know what we were going to receive in advance; and the creditors didn't know. The fact that some of the creditors, after we came back, objected, showed it was not satisfactory to all of them.

(Testimony of Edward R. Eliassen.)

Q. What I am trying to get at is, that at the time you were there in Spokane, didn't you understand that the creditors were desirous of keeping the amount down as low as possible?

A. That was suggested in one of the telegrams thereafter; also in Mr. Gotthold's letter; but whether that suggestion came to us before or after I do not know; but I naturally assumed they were wishing to get out of the estate as much as possible for themselves, and had in view the keeping down of the expenses.

Q. This telegram of Mr. Lieurance to Mr. Gotthold, dated December 10, 1926, contains this language: "As previously stated Eliassen and myself in fairness to creditors, attorneys and receivers matter of compensation should be left entirely to courts without suggestion or recommendation on our part as to amounts. This plan will be followed in ancillary jurisdictions and is supported by Walton Moore, A. V. Love and San Francisco Board of Trade. Their views and recommendations in this regard were communicated to Mr. Fraser yesterday by wire in reply to his request to them for same, as Judge Hand had evidently asked creditors' committee for recommendations as to aggregate allowances to be made attorneys and receivers." In view of that telegram didn't you feel that the creditors were entitled to [286] be heard, if you did make any suggestion of allowances to the Court, whether in response to questions or not?

(Testimony of Edward R. Eliassen.)

A. We went into court with the positive intention of saying nothing at all about amounts; but when questions were asked us point-blank which required a reply, we felt we had to give some answer to them.

Q. Why didn't you give him the answer that you were under obligations, that you had already represented that you would not do so, and you thought the creditors would want to be heard at the same time if you did make any suggestions or recommendations?

A. The thought didn't occur to me at the time. I am sure it wasn't intentional, or with the thought of keeping anything from the Court.

Q. This telegram of December 10th from Mr. Lieurance to Mr. Gotthold contained the further statement: "In view of the fact that fixation of fees and compensation will be left to courts in Western jurisdictions it is impossible for me to even guess at amounts which will be allowed." At the time that telegram was formulated and before it was sent you already knew what had been allowed by Judge St. Sure in this jurisdiction, didn't you?

A. When was that telegram sent?

Q. Six o'clock in the evening on December 10th, 1926.

A. I know such a telegram was sent; but I don't know when it was sent, and I didn't prepare it; I know I was shown it, because I have seen it.

Q. The telegram does not say anything about San Francisco at all. It does wind up by saying,

(Testimony of Edward R. Eliassen.)

"Application for orders to pay forty per cent dividend and allowances on account will be made in Northwest next week." Why wasn't anything said about the fact the application had been made that day in San Francisco?

A. I don't know that. Mr. Lieurance may have written that from his home; he may have written it in his office before going over to San Francisco. I don't know. I didn't file that telegram, and do not recall now when it was written. I do know this, that neither Mr. [287] Lieurance nor I ever intended to hide anything from anybody.

Q. That did conceal from Mr. Gotthold the fact he was to get 25% of the fee already allowed here, if it was sent at six o'clock.

A. If it was written at 6 o'clock. It may have been deposited at his office for transmission before he went to San Francisco.

Q. If you had a hearing before Judge St. Sure here on December the 10th, it did conceal it from Mr. Gotthold? A. It did. Yes, sir.

Q. You did ask Mr. Gotthold to agree to the proposition that Mr. Lieurance should have all of the fees out here in the western jurisdiction?

A. That suggestion was made in the telegram.

Q. After advising him of the fact that 25% of $10,000, was it?—what amount had been allowed here—yes; now, why didn't you notify Mr. Kirk or Mr. Moore on December 10th of what had been allowed here in San Francisco?

A. The understanding was we were to go to the

(Testimony of Edward R. Eliassen.)

various courts and get an aggregate for him. I don't recall whether we communicated with him or not; but that was the understanding; we were to—

Q. (Interrupting.) You say it was the understanding; that is a conclusion. I am asking what was said?

A. Well, it was the sense of the meeting—

Q. No; I don't think that will get what we want.

A. I don't recall just what was said, Mr. Heney.

Q. In substance.

A. I do know this: It was agreed that we could not agree to fix the amounts of allowances between or among ourselves; that the matter of allowances was going to be left to the courts; and we were going to Judge St. Sure's court next morning,—we were going to court; we didn't say Judge St. Sure's court,—to present the application there and follow that with applications in the northwest as soon as possible afterward.

Q. What did you understand as to this agreement when in Mr. Kirk's office and this telegram was formulated and sent by Mr. Walton N. [288] Moore to Mr. Fraser of the Creditors' Committee in New York? "Further answering your telegram receiver Lieurance and attorney intend having each ancillary Western court also order dividend forty per cent. To avoid possible conflict between Eastern and Western courts as to amounts of allowances to receivers and their attorneys as chairman of creditors' committee here and mem-

(Testimony of Edward R. Eliassen.)

ber of New York committee I earnestly request that questions of such allowances be deferred for time being until receivers and attorneys and committees can exchange views and come to some agreement concerning gross amounts to be asked for." What did you understand that to mean?

Mr. CROSBY.—Did you read all of the telegram, Mr. Heney?

Mr. HENEY.—All that bears on that. (Reading.) "Amounts of allowances to receivers and attorneys at this time by Judge Hand may prove unsatisfactory to ancillary courts who may order different amounts resulting in confusion."

Mr. CROSBY.—Isn't there something further?

Mr. HENEY.—(Reading.) "As you now know from yesterday's telegrams from Lieurance to Gotthold and attorneys McManus and Ernst, receiver Lieurance and attorneys in ancillary jurisdiction intend leaving amounts of allowances to discretion of ancillary courts."

A. That is exactly what I mean and what I understood.

Q. What?

A. That the matter of the allowances of the Receiver and his attorney here in the west was to be left to the courts. The idea of that telegram was, as I understood it, to bring about a postponement of the application at New York. It was thought that the application there was for sums in excess of what those people were entitled to; and they wanted to have the matter of the allow-

(Testimony of Edward R. Eliassen.)

ances here, either by—that is, what they wanted before, either by stipulation or agreement, or order of court determining it, so as to have that information available at New York on the hearing of the application [289] of the New York people. I think that telegram, especially the latter portion, omitted from the copy of the objections we received, clearly indicates what the understanding was.

Q. Why didn't you say,—instead of saying there was an intention to appear next week up there,—which would give those people time to employ attorneys up there, the application was going to be heard to-morrow morning in San Francisco?

A. Are you referring to the telegram now?

Q. Yes.

Mr. CROSBY.—He refers to the same telegram.

Mr. HENEY.—The same telegram.

Q. Why didn't you give that information?

A. I didn't send that telegram; that is not my telegram. I saw it. Whether I saw it before or after it was sent, I don't know.

Q. You were present when Mr. Kirk dictated it?

A. That telegram?

Q. Yes. This is the one I am talking about.

A. Mr. Kirk was dictating that telegram, and there were suggestions made from time to time, and it was his handiwork.

Q. What did you understand he meant by this: "I earnestly request that question of such allowances . . . " this is from Mr. Moore, mind

(Testimony of Edward R. Eliassen.)

you,—" . . . as chairman of the creditors' committee here and as a member of the New York Committee I earnestly request that the question of such allowances be deferred for time being until receivers, attorneys and committees can exchange views and come to some agreement concerning gross amounts to be asked for."

A. Yes; I understand by that, that it was the desire of the committee here that the matter in New York be postponed until a conference could be had upon the matter pending there.

Q. By "gross amounts" you didn't understand that to include the amounts to be allowed Receiver Lieurance and yourself?

A. I understood they were elements to be considered, considering the whole. [290]

Q. They said "Until there can be a conference by which the gross amounts can be determined."

A. We had our conference, and it was iterated and reiterated that no idea on that would be suggested by the receiver or his attorney, but the matter would be left to the courts here.

Q. You didn't have any conference with the eastern creditors or, rather, representatives, other than the talk in Mr. Kirk's office, and the sending of the telegram by Mr. Moore before coming out before Judge St. Sure, did you? A. No.

Q. On the contrary you declined to intimate how much you would ask for or how much Mr. Lieurance would ask for, didn't you?

A. We didn't want to fix any amounts.

(Testimony of Edward R. Eliassen.)

Q. Wasn't it because you feared there would be opposition to the amount from the eastern creditors, if you did fix the amount?

A. I don't think so.

Q. Then I will ask you again, why didn't you notify Mr. Kirk and Mr. Moore immediately before leaving San Francisco what amount had been allowed here?

A. Perhaps we should have notified them. I know we planned to get away that night; that we had a lot of work to do; that they were interested —that was our understanding of it anyway—they were interested in knowing what the total of these allowances would be. We had a great deal to do to prepare for the hearing in the north, the first of which would be the following Monday. This application here was made on Friday, and we left on Friday night for Portland; and there was no hearing before the Monday following, which was, of course, the next week.

Q. Why didn't you telegraph Mr. Kirk or Mr. Moore from Spokane saying how much had been allowed there?

A. As I have said before, the only idea we had in mind was to inform them the amount of the net results,—the aggregate results.

Q. When you got the telegram from Mr. Kirk, in which he suggested [291] you should not apply for any allowances in the western jurisdictions in view of Mr. Fraser's telegram in the matter,— when you got that on December 15th in Seattle,

(Testimony of Edward R. Eliassen.)

why did you not wire Mr. Kirk immediately in reply, telling him that you had already done so, and what amounts you had received in San Francisco, Spokane and Seattle?

A. Well, this telegram was handed us after the train had departed, and we were very much surprised, in view of what had passed in San Francisco, to get a telegram of that kind. I assumed, I don't know what Mr. Lieurance did,—I assumed a letter had been received the day of the telegram, which led Mr. Kirk to believe it would be inadvisable to go forward with those applications; but Mr. Kirk did not in that telegram give us the contents of that letter, or state the reason; and as we were on our return down to Portland and had already visited all the courts, except the one at Portland, we concluded there was no reason why we should defer the application there, and come down here, and then go back, making a special trip for the application there.

Q. Did they have any telephone service between Portland and here at the time? A. I think so.

Q. And you could have talked to Mr. Kirk and had an understanding? A. Yes.

Q. And Mr. Moore?

A. Yes. We could have talked with them; whether we could have an understanding or not, I don't know.

Q. You were entirely indifferent as to what the creditors might feel about the amounts of the allowances? A. No, sir; I was not.

(Testimony of Edward R. Eliassen.)

Q. Immediately after the creditors,—or shortly after the creditors learned of the amounts of the allowances, a petition to set aside those matters was presented to Judge St. Sure here, wasn't it?

A. That is what you told me.

Q. And may it be stipulated that Judge St. Sure asked me if I had had any talk personally with Mr. Eliassen; that I said, I had not; [292] and that he suggested before filing it I should have a talk with Mr. Eliassen, and that I agreed to do that; that I had never been in the matter before up to that point; and that as a result of our talk with Mr. Eliassen a reduction was brought about,—by negotiations between you and myself?

A. You telephoned me, Mr. Heney, telling me what had transpired, and asked if it would be convenient for me to see you that day I immediately replied, that I would come over at once. I met you at your office, and I hadn't heard of this petition of yours, or application, until you told me of it. You stated that the Judge had suggested that you see me, and that we confer. You didn't show me a copy of the objections. You were very cordial, as you have always been with me, and you suggested that you were going to seek, or had been asked to have the orders,—or make some application to have these orders set aside. I then asked you, without knowing the contents of that petition or written objections, if you didn't feel I was entitled to something on account; and you said, "Yes; I certainly do."

(Testimony of Edward R. Eliassen.)

Mr. HENEY.—I still think so.

A. (Continuing.) And then you asked me what amount I had in mind; and I said, "Well"—I said, "I think I ought to have at least $15,000 on account at this time"; and you said, without any hesitation, "I think so, too."

I then told you that we had a stormy meeting at Mr. Kirk's office; that we wanted to act in harmony; that we went over there prepared to suggest that for the time being the figures be reduced,—the allowances be reduced on account until later, but that we could not bring up the subject; that we attempted to do it but Mr. Kirk said, "No; that time is past"; do you recollect that?

Mr. HENEY.—If you say so.

A. (Continuing.) "That time is past when we will talk of reduction. We want those matters set aside." [293]

Mr. HENEY.—I recall that.

A. (Continuing.) It was agreed upon that $15,000 would be allowed on account at an interview at your office; and you asked if I had spoken to Mr. Lieurance of it; I said, "No"; I would see him, but felt he would take the same attitude, and would get him to go over to your office. It was on leaving your office you then said to me: "Here is a copy of the objections," and handed me a copy. And I remember reading that copy going across the Bay. I was very much hurt, to be frank with you, at some of the statements made therein; but my understanding (I don't know, Mr. Heney, whether

(Testimony of Edward R. Eliassen.)

the understanding was gotten in the conversation at that time) my understanding was, that in view of the fact we were willing to agree to these reductions these objections would not be filed; and as a matter of fact—

Mr. HENEY.—They were not, were they?

Mr. CROSBY.—They are here.

The WITNESS.—They are filed here.

Mr. CROSBY.—They are reiterated.

The WITNESS.—I am very much surprised, and I feel there was a breach of our understanding. I am not saying it was an intentional breach. The understanding was it should be withdrawn and not be a matter of record.

Mr. HENEY.—These matters were filed by Mr. Townsend during my absence in Los Angeles; but I didn't understand the objections were not to be used in connection with the matter if occasion came up for them; but they were not to be filed for the purpose of getting the reduction, and they were not filed.

The WITNESS.—Not after the reduction was agreed to.

Mr. HENEY.—Certainly not.

Mr. CROSBY.—They are appended as Exhibit "A" to the objections and exceptions which you have taken to the final account and made a part of your objections and exceptions to the final account. [294]

The WITNESS.—That is contrary to the under-

(Testimony of Edward R. Eliassen.)

standing we had, that that was not to be a matter of record.

Mr. HENEY.—Well, I am sorry if it is. I would not so consider that understanding,—I mean, as precluding it from ever being used if a new situation arose which called for it. All that either of us had in mind at the time was that particular thing which was up then, whether or not we were going to have to go to court in order to secure a reduction, and if we didn't have to there would be no purpose in filing it at all; and Judge St. Sure had suggested to me, when I went there that morning and was going to file it,—I first went to him before filing it, and went into his chambers; and he at once wanted to know if I had talked with you personally. I said, "No"; and he said, "Well, won't you go and have a talk with Mr. Eliassen before you file this?" I said, "Certainly"; and then as a result of our negotiations (Mr. Lieurance came into the negotiations, too) these reductions were made.

The WITNESS.—Well, I don't want to be understood as saying the deductions were made because of anything contained in the objections, because I didn't know anything about what was in the objections until after you and I had come to an agreement. There was no coercion there as far as I was concerned.

Cross-examination by question and answer resumed by Mr. HENEY. You (Mr. Heney) told me that the creditors were objecting to the amounts;

(Testimony of Edward R. Eliassen.)

and I said I was perfect*ing* willing to agree to a reduction there, and you and I came to a very quick understanding. It was all over in a very few minutes.

Q. I was as good natured then as I have been ever since?

A. I don't want you to think from anything I have said here that I do not hold you in the highest regard. I have a very warm feeling for you and have had all the way through. You have treated me as one gentleman to another, and I appreciate it. But I do feel that exhibit in the end of those objections, which had been withdrawn, [295] and which was a thing of the past, should not have been attached, and should not be a part of this hearing here. You were in Los Angeles at the time, and I am not saying who did it.

TESTIMONY OF A. F. LIEURANCE, FOR PLAINTIFFS (RECALLED).

A. F. LIEURANCE, witness for the plaintiffs, was recalled as a witness for the plaintiffs and testified, in substance, as follows:

Direct Examination by Mr. CROSBY.

The final account and report (of the witness as Receiver) were filed in May, 1927.

At this point, counsel for plaintiffs stated that a supplemental account and report had been prepared, bringing the status of the matter down to the present time; that it was desired to file the

(Testimony of A. F. Lieurance.)

original of the supplemental account and report, and deliver a copy to counsel for the objecting creditors, so that when the matter is discussed, it will show a complete account and report.

The question of the authority of the Master to consider the supplemental report was discussed and it was stipulated by all parties that the supplemental account should be treated and considered as within the scope of the jurisdiction of the Master.

At the suggestion of the Master, the original of the supplemental account and report was filed with the Clerk of the court as a document in the case; and a copy thereof was furnished to counsel for the objecting creditors, and another copy for use in the examination before the Master.

Direct Examination of Witness LIEURANCE by Mr. CROSBY (Resumed).

That supplemental account brings the records of this proceeding down to date, showing what has been received, and what has been disbursed, by myself, belonging to this estate, and in the supplemental report, I have reported my proceedings subsequent to the filing of what was indicated heretofore as my final report. [296] Mr. Hershey has still continued to act as accountant in this matter since the filing of my original final report. He has never been discharged yet. Since the filing of my original final report, Mr. Hershey has been called upon to do whatever accounting there was to do. When we attempted to have the final hearings in the juris-

(Testimony of A. F. Lieurance.)

dictions of Eastern and Western Washington and Oregon, it was necessary for Mr. Hershey to be there on the matter. When we went into those jurisdictions, we went up there to be present at the final hearings on the final accounts and separate reports in the various jurisdictions. I took Mr. Hershey along with me, in regard to these,—supporting the account and the reports.

Q. And at that time had the objections and exceptions been filed in all of the jurisdictions, as here?

A. My understanding was they were filed at the time we got there, about that time; I don't think they were filed previously.

I don't know whether the objections and exceptions to the final account, as presented in this court had been filed here before we started North to the other jurisdictions. My impression is they had not. They were filed in the jurisdictions of Oregon and Washington,—Eastern and Western Washington, and Oregon, on the morning we appeared in court, as I understand it.

Q. In those objections and exceptions like attacks were made upon Mr. Hershey's services, were they; and payment by you to Mr. Hershey?

A. As far as I know they were.

Q. You in your report here recommend to the Court moneys in further payment, do you, to Mr. Hershey?

A. He has not been paid for his services since the filing of the final account by me.

(Testimony of A. F. Lieurance.)

Q. You feel, do you, that he would be entitled to further payment, to further compensation?

A. I think any man who does work is entitled to pay for it. The work had to be done. [297]

(At this point it was announced that the original supplemental account now bore a file-mark upon it; and it was stipulated that the questions propounded to the witness, and the answers given thereto, should be deemed and considered as if said supplemental account had already borne the filing mark of the Clerk.)

TESTIMONY OF PHILLIP A. HERSHEY, FOR PLAINTIFFS (RECALLED).

PHILLIP A. HERSHEY, recalled as a witness for the plaintiffs, testified, in substance as follows:

Direct Examination by Mr. CROSBY.

Since the filing of the final account and report of the Receivers sometime in May of this year, I have done such other work for Mr. Lieurance as Receiver, and under his direction, as I was called upon to do.

I believe there was a report to Mr. Gotthold. Mr. Gotthold requested a report of some transactions. That report was made for Mr. Gotthold at the request of Mr. Lieurance.

I have also been called upon,—called into conferences on numerous occasions between Mr. Lieurance and Mr. Eliassen, his attorney, and at times by Mr. Lieurance alone.

(Testimony of Phillip A. Hershey.)

I also prepared for this court the supplementary final account, so designated, which is now filed here.

Acting under the instructions of Mr. Lieurance I accompanied Mr. Lieurance and Mr. Eliassen to Spokane, Seattle and Portland, and was absent approximately two weeks on that work.

I attended these hearings here at the request and under the instructions of Mr. Lieurance, the Receiver; and, I don't know whether it is any part of the record or not, but I was on my way to be very frank, I was in the middle of a vacation, and at the close of the vacation I was going to Cleveland, Ohio; at that time I was in Atlanta, Ohio, and my plans called for me to go to Cleveland, Ohio, where I have some work to be done, and it will necessitate my return to Cleveland, Ohio, at higher railroad rates, due to the fact that the summer [298] excursions are no more, and I don't know whether it should have any bearing or not; if it should not have I won't ask for it.

Q. Exclusive of that situation, what do you think would be a fair compensation to you for the services necessarily rendered by you to Mr. Lieurance, in connection with this business, since the filing of the final account and report herein?

A. I am perfectly content to leave it to the discretion of the Master in this case. A statement of the services rendered had been filed, and I am content to leave it to his discretion.

(Attention was then directed to the fact that the supplemental account of the Receivers which had

(Testimony of Phillip A. Hershey.)

been filed, included a statement of the services rendered by Mr. Hershey.)

Witness Interrogated by the MASTER.

This (statement of the services of Mr. Hershey, appended to the supplemental account of the Receivers, above mentioned, bears my signature; and the facts stated therein are true.

Cross-examination by Mr. HENEY.

Q. Mr. Hershey, you say here,—"Auditing all receipts and disbursements, May 1st, 1927, to October 15th, 1927, inclusive." What were the receipts and disbursements,—do they show here?

A. Yes; they show as page 1 of the supplemental account.

The MASTER.—The receipts do?

A. Yes.

Q. And disbursements. A. Page 2, 3 and 4.

Mr. HENEY.—Q. What do you mean by "Auditing the receipts"?

A. I mean to say I checked the interest, to see that the interest credit was proper and had been credited to the account of the Receiver at the bank, and that his bank balance, as stated here, was correct.

Q. You would not say that it took an expert accountant of your standing to do that, would you?

A. I would say I was acting under the instructions of the Receiver to do that, Mr. Heney.

Q. Do you think that Mr. Lieurance is not competent to do that himself?

(Testimony of Phillip A. Hershey.)

A. I have no doubt about the ability of Mr. Lieurance. [299]

Q. Or that he could do it himself?

A. That would be a conclusion of his own ability by myself of a certain nature, and I cannot state it. He probably could. I think due to the trouble that has arisen in this matter he thought it was proper—

Mr. HENEY.—As to what he felt you can't possibly know that.

A. What?

Mr. HENEY.—As to what he felt you can't possibly know that, except by his telling you, and that would be hearsay; so we will omit it.

A. I think that is right.

The receipts that I audited all appear on the first page; and the disbursements which I audited appear on the other pages.

Mr. Lieurance, the Receiver, made the disbursements, by check.

Q. And you wanted to see if he made any mistakes or not; is that the idea?

A. To verify the correctness of his statements to the Court.

The total amount involved in these receipts, since the final account, is $632.79. The total amount of the disbursements is $3,913.31, which includes a Master's fee of $1,000, leaving $2,913.31.

The item "Southern Pacific Railroad Company, transportation $228," on page 3, is for transportation purchased on July 20, for Mr. Eliassen, Mr.

(Testimony of Phillip A. Hershey.)

Lieurance and myself, to Portland, Spokane, Seattle and return, to attend the hearings upon the final account.

The item of July 25 "Portland Hotel, travel expense, $200.44, covers the hotel expenses for the three of us, and Pullman accommodations, etc., which were ordered at the hotel to Spokane; just the Pullman accommodations; I cannot state the amount paid for the Pullman accommodations right off-hand.

We were at the Portland Hotel five or six days; I can't tell definitely, because we left in the morning or evening,—I don't know which; we were there five or six days; I believe it was five days. [300]

We had two rooms, twin beds in one room and a single bed in the other. Mr. Eliassen occupied the single room; and Mr. Lieurance and myself occupied the double room. I can't recall the rate for the rooms, from my memory.

Q. Have you a voucher here?

A. Just a duplicate remittance advice. I don't know whether the complete voucher is here or not. We were going to file it with the account. I am going to gather them and file them all here.

We have a bill from the hotel; I believe there were cash transactions also. By cash transactions, I mean that we had to pay for meals on the train; we paid for some meals outside of the hotel, in Portland, I believe; I shall have to refer to the record on that. There is also included in that bill

(Testimony of Phillip A. Hershey.)

at the Portland Hotel a charge for a stenographer for some legal papers which Mr. Eliassen had to prepare for the Court in Portland at that time.

Referring to the item, "Davenport Hotel, Spokane traveling expenses $47.76"; we were there one day; and they secured the Pullman accommodations to Seattle for us. That includes the Pullman accommodations; the hotel ordered them, and we paid for them. We did not have any drawing room; we had three lowers, I believe.

Referring to the item, "Olympic Hotel, Seattle, $209.28"; we were in Seattle six days. The law and motion day was separated by one week as I understand it; you know more about that than I do. The Olympic Hotel bill above mentioned (which also includes an item of $43.70, making a total of practically $253) includes the Pullman fare, back to Oakland.

Q. You feel quite sure of that?

The MASTER.—To Portland.

The next item, "Southern Pacific Railroad, $256.16," was in payment for round trip ticket, including Pullman for Mr. Eliassen to New York and return.

The item, "August 4th, A. F. Lieurance, advance traveling expenses, $62.30," was paid to Mr. Lieurance for sums expended on [301] trip above mentioned; for meals and some of the miscellaneous expenses.

Q. On the Southern trip? A. Yes, sir.

Q. From the North?

(Testimony of Phillip A. Hershey.)

A. Yes, sir; we had to eat on the way back. We also had to pay for hauling quite a few records.

Q. You didn't eat $62 worth on the way back, I hope.

A. I can't state as to that. I will look up the detail of it for you.

I think those expenditures are all in proper order. The vouchers representing the amounts are not on file; we are filing them here later on; I think I can have them here tomorrow.

TESTIMONY OF A. F. LIEURANCE, FOR PLAINTIFFS (RECALLED).

A. F. LIEURANCE, recalled as a witness for the plaintiffs, testified, in substance, as follows:

Direct Examination by Mr. CROSBY.

My business is that of a merchant; that has always been my occupation,—or nearly always. I have been engaged continuously in the merchandising business since 1911, except about a year and a half, until about 1925. Even before that,—I began in the merchandising business when I was about fifteen years old. My introduction into the business was as a clerk. I am 45 years old.

When I first began in the merchandising business I began as what is commonly known as a clerk in a country store, and in two stores I worked for the next seven years; two stores I worked in I acted in that capacity,—for the next seven years.

(Testimony of A. F. Lieurance.)

In 1911 I became engaged in the chain store business, and have been in it ever since,—with J. C. Penney Co. Its main office is at New York City; and its chain stores extend over the whole of the United States. When I severed my connection with the company, it had approximately 750 stores.

I served in a good many capacities while I was with the Penney chain stores organization. I have been store manager for some [302] three years; a local buyer; and previous to that I was salesman in a store for a couple of years. Then I was buyer of merchandise, that is, a resident buyer in New York for about two and a half years. Then I was the advertising director of that business, and also—

Q. For the whole business?

A. Absolutely; also had charge of the personnel and the sales department of those stores; they weren't 750 at the time; there was, if I remember correctly, 497 at the time I was handling the advertising; and I had charge of the personnel of those stores; and later traveled quite a lot and for almost two years in the interest of building the organization among the men in the institution, throughout the country. I served on the board of directors for two years.

In 1926, I started a store of my own at Ukiah, California, and was planning to start some more. I had other business interests which were alive and moving during the year 1926. I had considerable interest in the Penney Co., and have yet. I looked

(Testimony of A. F. Lieurance.)

after and I have a pretty good-sized ranch in Sacramento Valley; that I look after yet. I have other affairs I have to attend to, personal affairs.

When I first heard of my having been selected or mentioned as a Receiver of this Pilcher Co. matter, I was living in Oakland. I received the information from McManus, Ernst & Ernst, attorneys in New York. I had known Pilcher, and knew that such a chain of stores existed; this was the first that I knew of its being in financial difficulties.

I say that McManus, Ernst & Ernst first communicated with me in relation to this matter. They did not at that time advise me of the nature and extent of the chain store business of the Pilcher Co.; they simply notified me by telegram that I had been appointed a Receiver for the R. A. Pilcher Co. That was the first intimation I had that the Pilcher Co. was in trouble.

Q. You proceeded then, did you to learn the nature and extent of the Pilcher Co. and its business? [303]

A. I knew something about the nature and extent of the business, I won't say all about it, but considerable about the nature of the business; and I knew in a general way the extent of the business, because I have known Mr. Pilcher.

With the understanding that those stores were classed as general merchandise stores and their stocks were made up of overcoats, men's ready to wear clothing, men's furnishing goods, ladies' and

(Testimony of A. F. Lieurance.)

children's clothing, hats and caps and other lines usually found in department stores; the type of merchandise which entered into the activities of the Penny Company with which I was connected, was identically the same.

After receiving this notice of my appointment or selection, I had a conference with an attorney, Mr. Eliassen, as to what were the duties of a Receiver. I had to learn what they were; and I conferred with Mr. Eliassen, and he is my present attorney in this matter.

I answered the Ernst communication. I also had a telephone call from Mr. Walton N. Moore, of San Francisco, in regard to this receivership. He is one of the objectors here; he is a member of the Western Creditors' Committee,—so I was later informed; I don't know whether he was a member of the eastern Creditors' Committee. I first received my communication from Walton N. Moore at my home in Oakland. I assume he was in San Francisco, from the nature of the conversation; he asked me to come over and see him; I took it for granted that he was in San Francisco at the time.

I met him in San Francisco; subsequently I met him in Piedmont in his home.

Up to that time, I didn't know anything about the plan or purpose of the creditors, in relation to this proceeding, except that I had been appointed Receiver; and Mr. Moore told me he had talked over the telephone with some in New York,—Mr. Fraser, I believe,—and that the Pilcher Co.

(Testimony of A. F. Lieurance.)

was in trouble; and other than that he knew very little about the nature of the trouble. [304]

I received a communication from McManus, Ernst & Ernst by letter, concerning a certain creditors' meeting in New York which had in prospect an extension of time to the Pilcher Co., in order for it to try to refinance itself, or to re-establish itself as a going institution. I have that letter here. This was in response to my communication with McManus, Ernst & Ernst, asking them what the nature of this receivership was, and what was proposed,—what they proposed to do; and just what I was expected to do.

I think I got some of the printed communications afterwards; I think I have it here.

Q. In your communication with Mr. Moore, was anything said by him or you with regard to your connecting yourself or associating yourself with the San Francisco Board of Trade, in your capacity as Receiver here?

A. There was at Mr. Moore's home in Piedmont the evening after we had the meeting in San Francisco in the afternoon.

Q. What was that?

A. Well, Mr. Moore suggested that—he insisted that I accept the receivership, and had recommended me very highly and could not think of a better man, and other remarks along that line, and prophesied that there would be trouble in refinancing the business, and suggested that I take the receivership,

(Testimony of A. F. Lieurance.)

and thought the San Francisco Board of Trade was the logical institution for the handling of that business; and, in fact, they were the general recognized agency for that purpose; they had the machinery and equipment and all that sort of thing, and he asked me to go over and start housekeeping there and go ahead with the receivership.

Mr. Moore also spoke to me as to the selection of counsel by myself. He suggested that I use the attorneys employed by the Board of Trade. I did not give him any immediate answer to that.

Q. Did you subsequently make your views known to him on that or those subjects?

A. I told him that I had conferred with Mr. Eliassen regarding the [305] duties of a Receiver; that this was a new business to me; I knew nothing about the receivership business. I did know about the merchandise and had conferred with Mr. Eliassen, but I could not or would not accede to his demand to go and use the attorneys of the Board of Trade, until after I had thought the matter over; and I did subsequently decline to do that.

Q. You thought, having been appointed and assuming the responsibilty, you wanted, and very naturally, to use your best judgment in the management of this business? A. Yes, sir; I did.

Mr. HENEY.—Let him do the testifying now.

Mr. CROSBY.—All right; perhaps we had better adjourn.

Adjournment was then taken until the next day.

(Testimony of A. F. Lieurance.)

Direct Examination of A. F. LIEURANCE by Mr. CROSBY (Resumed).

I have made a thorough search of my records, for the telegram from myself to my stenographer in relation to the sending of a wire on to New York requested by Mr. Heney.

The stenographer who was then in my employ ceased to be in my employ on July 15 of this year. She is in Oklahoma or she was the last I heard of her.

(Questioned by Mr. HENEY.)

Q. In other words, you (did not) find it?

A. I didn't find it yet, I am still looking. I imagine it could be gotten from the telegraph office in the event it was sent by the Western Union. I don't know. There is a possibility it might have been with some other communication.

(Attention was then directed to the telegram dated December 10, 1926, from A. F. Lieurance to A. F. Gotthold, which had theretofore been read into the record; and Mr. Crosby made the following statement concerning it:)

While on this matter of the telegram, I wish to have the record show that, among other things, it stated: "It has been suggested here and evidently at New York also that you receive your [306] compensation in parent jurisdiction and I look to courts in ancillary jurisdiction for my compensation. Stop. There is no doubt this will simplify matters and keep aggregate amount to be allowed

(Testimony of A. F. Lieurance.)

down to reasonable figure as suggested at yesterday's meeting. However, no one can foretell how this will work out. Please let me have your views regarding this arrangement. Application for orders to pay forty per cent dividend and allowances on account will be made in North next week."

Direct Examination of the Witness LIEURANCE by Mr. CROSBY (Resumed).

Under date of December 15, I received a telegram from Mr. Gotthold relating to that part of my telegram to him of December 10, having to do with the suggestion as to the division of those fees. The document just shown to me is either the original or a copy of that telegram; I judge that it is the original; I suppose that I received it on December 15, 1926; it is dated on that day.

(Thereupon Mr. Crosby offered the telegram of December 15, 1926, above mentioned in evidence; attention was directed to the fact that it had already been introduced in evidence and read into the record; but counsel for plaintiffs again read the telegram into the record. It will not be repeated here.)

There were further communications between myself and Mr. Gotthold in relation to that subject; there was considerable communication in regard to it,—that is, with relation to the division of the fees. Those communications are in this file; I will have to look through it to get it.

I replied to the wire from Mr. Gotthold dated December 15, 1926. I replied on the same day. I have a copy of that reply here.

(Testimony of A. F. Lieurance.)

(Thereupon counsel for plaintiffs read into the record the telegram dated December 15, 1926, from A. F. Lieurance to Arthur F. Gotthold; and which telegram had theretofore been introduced in evidence and read into the record and therefore will not be repeated here.) [307]

I received a reply to that telegram, and have it here.

(Thereupon, counsel for plaintiffs read into the record the telegram dated December 16, 1926, from Arthur F. Gotthold to A. F. Lieurance; which telegram had theretofore been introduced in evidence and read into the record and therefore will not be repeated here.)

I replied to the telegram last referred to; and here is the reply.

(Counsel for plaintiffs then read into the record the telegram dated December 20, 1926, from A. F. Lieurance to Arthur F. Gotthold; which telegram had theretofore been introduced in evidence and read into the record, and therefore will not be repeated here.)

(The telegram above mentioned as having been previously introduced and read into the record were introduced and read into the record during the cross-examination of the witness Edward R. Eliassen.)

Direct Examination of A. F. LIEURANCE by Mr. CROSBY (Resumed).

I remember the telegram referred to yesterday,

(Testimony of A. F. Lieurance.)

from Mr. Kirk to myself and Mr. Eliassen which found us on board a train and which read as follows:

> "In view of the communication received by Walton N. Moore from Fraser, Chairman New York Creditors Committee, it is highly desirable that you should not apply for receiver's allowances or attorney's fees in Western jurisdictions until whole subject-matter can be again discussed here upon your return."

At that time, no communication from Fraser had been made known to me,—that is so far as its substance was concerned. We had not known of any communication from Fraser other than this reference to such communication in the telegram from Mr. Kirk above quoted.

Q. Yesterday when we adjourned some references were being made to your communications with Mr. Moore, of the Board of Trade of San Francisco. At the time that you were in conference with Mr. Moore, [308] had you learned from him what, if any, relationship he, personally, bore to the Board of Trade of San Francisco.

A. I think Mr. Moore told me that he was the Chairman of the Board of Trade, or had been the Chairman. I am not positive just what connection he had. If I remember correctly it was that he was the Chairman of the Board of Trade.

When I employed Mr. Eliassen I obtained offices in Oakland, in the Central Bank Building on the 12th floor, adjoining Mr. Eliassen's. During all of

(Testimony of A. F. Lieurance.)

the period of this receivership, my home was in Oakland.

Q. In selecting your office and making arrangements for payment of rent, upon what terms did you get that office and its use?

A. We got two small rooms, for which we paid $90.50 a month. We were informed by the agents for the lessor that their purpose was to lease these rooms for a period of years. They were loath to let us have the rooms unless we would take a lease on them. However, after explaining the situation and advising them that it was necessary that we be in close proximity to Mr. Eliassen in order to facilitate the handling of this business, they consented that we might have the rooms on a monthly rental basis.

Q. Was that any greater than their lease?

A. No.

I have communications from McManus, Ernst & Ernst, with relation to the purpose of the receivership, from it inception. This correspondence, in order to build up the whole of the communications that have passed, would have to begin at the beginning, where I wired McManus, Ernst & Ernst on June 3d.

I have in my possession a copy of the wire sent by myself to McManus, Ernst & Ernst on or about June 3, 1926, in relation to this matter.

(Thereupon, counsel for the plaintiffs offered the telegram last mentioned in evidence, being dated

(Testimony of A. F. Lieurance.)

June 3, 1926, signed by A. F. Lieurance and addressed to McManus, Ernst & Ernst, 170 Broadway, New York City, and which telegram was read into the record, as follows:) [309]

> "Wire received announcing my appointment with Arthur H. Gotthold as receiver of R. A. Pilcher Co. Inc. Stop. Will take possession Western stores as directed and do what I can to prevent attachments. Stop. Please wire me who you represent and cause to be sent me 16 certified copies of order making appointment. Stop. Also list of assets and schedule of liabilities, giving names and addresses in full of all creditors. Have papers sent Air Mail and wire me information in premises stating also where it is desired I shall present bond and qualify. Desire to know also by wire if all accounts of receivers shall be joint, or whether Gotthold shall act in the East and I shall have exclusive charge as receiver in States of California, Oregon, and Washington."

(Thereupon the witness identified, and counsel for plaintiffs introduced in evidence and read into the record, the following telegrams which passed between A. F. Lieurance and McManus, Ernst & Ernst:)

"New York, N. Y. 9:59 A June 4, 1926.

"A. F. Lieurance, Oakland, California, 1092 Grand.

"We represent Creditors Committee and complainants in equity suit and order will be rendered

here today authorizing us represent receivers. Will send you by air mail sixteen certified copies order. Will mail you earliest possible date names and addresses of all creditors and statements of assets. Stop. Send individual bond to us air mail for filing here. Stop. Acts of receivers shall be joint. Will wire further instructions later in the day.

McMANUS, ERNST & ERNST."

"June 4, 1926.

"McManus, Ernst & Ernst, 170 Broadway, New York City, N. Y.

"Wire received. Stop. As site of operation is here on coast it is necessary for me to select my own counsel, and I have selected Edward R. Eliassen, Central Bank Building, Oakland, California, as my attorney. To save expense and avoid loss of time and the other complications that will arise as result of joint control I suggest that complete control be granted me for Oregon, Washington and California. This procedure is approved by some Western Creditors, and I feel will meet with approval of all creditors. I am writing you fully in this regard. I am also communicating with Judge Hand in the premises.

A. F. LIEURANCE."

"New York, N. Y. 6:26 p. June 4, 1926.

"A. F. Lieurance, 1092 Grand Avenue, Oakland, California.

"We urged your appointment of receiver at suggestion of Creditors Committee to secure complete

co-operation with Eastern Creditors. Stop. Executive office and chairman and secretary of Creditors Committee here and we are attending to mailing copy of order of receiver to each creditor. Also notice required by Judge Hand, copy of creditor's agreement and letter from Creditors' Committee. There [310] are also judgments and attachments here and we can be of best service as attorneys for both receivers. It is quite proper you have your local attorney act in West and you take charge of Western situation and communicate immediately with various managers and guide them in their duty. While control should be joint, receiver here will not interfere with your control in West. Suggest you confer with Walton N. Moore, who wishes to be of help through San Francisco Board of Trade, and also A. V. Love, of Seattle, with relation to purchasing merchandise for stores, and further suggestion that you and Arthur H. Gotthold be made ancillary receivers in Oregon, Washington and California. This is desire of New York members Creditors Committee.

McMANUS, ERNST & ERNST."

"June 4, 1926.

"McManus, Ernst & Ernst, 170 Broadway, New York City N. Y.

"We have this day forwarded by air mail bond of A. F. Lieurance as receiver of R. A. Pilcher Co. Inc. Edward R. Eliassen, as Attorney for A. F. Lieurance."

"June 5, 1926.

A. F. Lieurance, Oakland, California, 3840 Grant Avenue.

"Receiving daily many telegrams from managers stores about attachments. Will you communicate with store managers and see what arrangements can be made to have attachments listed. Stop. If attachments troublesome will arrange file bankruptcy petition here and have Gotthold and you appointed receivers. Letter follows.

McMANUS, ERNST & ERNST."

"June 5, 1926.

McManus, Ernst & Ernst, 170 Broadway, New York City, N. Y.

Have taken possession of all stores by wire and given instructions to store managers pursuant to directions already received from you. Stop. Advise me if it is desire of Creditors Committee to have business continued with a view toward its building up or am I merely to take charge with a view toward immediate liquidation. Stop. Have talked with Walton N. Moore, and am communicating with A. V. Love by letter. Stop. Will take whatever action is necessary when I know definitely what the committee wants done.

A. F. LIEURANCE."

(Testimony of A. F. Lieurance.)

Direct Examination of Witness LIEURANCE (Continued).

In answer to the above telegram, I received a letter from McManus, Ernst & Ernst, dated June 5, 1926. It is quite a lengthy letter; there are just a few paragraphs in it that just touch on this.

(Thereupon, counsel for plaintiffs introduced in evidence, and read into the record, certain portions of the letter last referred to, as follows:) [311]

"A meeting of the creditors of R. A. Pilcher & Co. Inc. was had on May 28th. That meeting was largely attended, and resolutions were unanimously approved appointing a Creditors' Committee, and granting the debtor corporation an extension of one year. The Creditors Committee selected at that meeting is composed of:

A. V. Love, President, A. V. Love Dry Goods Co., Seattle, Washington.

Walton N. Moore, President, Walton N. Moore Dry goods Co., San Francisco, California.

J. Von Dohln, of Hess Goldsmith Co., New York City, N. Y.

George G. Black, President Black Manufacturing Co., Seattle, Washington.

William Fraser, President, New York Credit Men's Association, New York City.

Mr. Black has advised the committee he refuses to act, and Mr. William Schmidt, of the International Shoe Company, has been selected in his place. The Creditors' Committee selected me as its counsel. Settlement agreements were imme-

diately prepared by me in conjunction with counsel for Pilcher Co. Inc. and the closest co-operation existed and still exists between the Creditors' Committee, R. A. Pilcher Co. Inc., and myself. It was the plan to use the money on deposit in New York to pay an immediate 10 per cent. cash dividend when the creditors' agreement was declared operative. Although the banks hold obligations against the debtor corporation arrangements were made that the banks would not offset these obligations against the cash balances, so that the money could be used. Of course, if the receivership is not listed, the banks will use all of the cash on hand and apply it on account of the obligations of the debtor corporation, which amount at this time to about $135,000.

After the committee was organized a number of small creditors here persisted in entering judgments in actions brought against the Pilcher Company, to which there was no defense, and the creditors in the West started to attach. The Creditors' Committee felt that it would be unequitable to permit any preferences, and would only encourage other small creditors to begin suit for attachments, and with the consent and co-operation of the Pilcher Company a suit in equity was started by me and at the request of the Creditors' Committee I submitted your name as one of the receivers. Judge Hand adopted my suggestion and you and Arthur F. Gotthold, who was selected by Judge Hand, were appointed receivers.

In order to prevent unusual expense it is the hope that you and Mr. Gotthold will be appointed ancillary receivers in each jurisdiction where there are assets of the Pilcher Co. One receiver in the East and one in the West would be cumbersome. There is no desire on the part of Mr. Gotthold to interfere with your management and control of the Western situation. On the contrary, he wishes to be helpful to you in that situation, but for purposes of co-operation and contact, the members of the Creditors' Committee in the East desire you and Mr. Gotthold to be co-receivers in every jurisdiction.

Mr. Gotthold has already arranged to borrow money on receivers' certificates for the purpose of buying additional merchandise to balance the stock at the various stores. Mr. Love and Mr. Moore will co-operate with you in carrying out this program, and also in determining what merchandise should be purchased. Of course, it will be necessary that the assets of the Pilcher Company in every jurisdiction be pledged as security for the payment of the receivers' certificates. Mr. Gotthold will not be able to borrow money on receivers' certificates here if he is not co-receiver with you in the Western jurisdictions, and it will be necessary for orders to be [312] entered in the Western jurisdictions permitting the assets to be pledged. You will, therefore, appreciate how important and necessary it is that there be complete co-operation between you and Mr. Gotthold as receivers in this situation. Otherwise, there will be great confusion and small hope of reorganization.

(Testimony of A. F. Lieurance.)

Unfortunately, many of the Western creditors have levied attachments. The suit in equity will serve only to stay these suits, but will not dissolve them, and unless the attachment creditors will come into the plan of reorganization it will be necessary to file a petition in bankruptcy. This, of course, will dissolve the attachments.

On behalf of the New York receiver I have not instructed the managers of the stores in the West. That matter has been left entirely to you.

I will send you by air mail on Monday copies of the bill of complaint and the answer in the equity suit here, so as to assist you in bringing ancillary proceedings.

I beg to remain,

Very truly yours,
IRVING L. ERNST."

Direct Examination of Witness LIEURANCE (Continued).

I replied to the foregoing letter, and I have my reply to that letter.

I received a copy of the Creditors' Agreement in this matter. I don't know just what time it was received. It was some time after these letters were received. It came together with the sixteen copies referred to. (Copy of the Creditors' Agreement referred to is produced.) I received that from McManus, Ernst & Ernst; but it never became effective; the creditors did not all sign up.

(Testimony of A. F. Lieurance.)

Mr. HENEY.—The point is that they proceeded running the business on the theory that they were trying to have this signed up. That is the point about it.

Mr. CROSBY.—This is merely an incident. It never ripened into a reality.

Mr. HENEY.—No, but it shows the intention of the parties at the time.

(The copy of the Creditors' Agreement above mentioned was introduced in evidence, and marked Receivers' Exhibit No. 8.)

I was first appointed as temporary Receiver. Approximately [313] a month elapsed between the time of my appointment as temporary Receiver and my appointment as permanent Receiver; it might be a few days over a month.

(Counsel for the objecting creditors interrupted the examination, and stated in the record, that the statement by counsel for the plaintiffs to the effect that the Creditors' Agreement above mentioned was not "signed up" should be qualified in the following respect: That "it was partially signed up," but they did not succeed in getting all the creditors in, and therefore the matter proceeded under the receivership.)

Direct Examination of Witness LIEURANCE (Continued).

Q. What did you find the situation to be in regard to suits and attachments that were in being

(Testimony of A. F. Lieurance.)

against this company when you undertook this receivership?

A. There had been an attachment or two filed in California prior to the receivership, that is, they took precedence over the receivership. There might have been three. I don't remember just the number. There were quite a number of threats; a great many people who were creditors were anxious to find out about the condition of their bills, and but for a restraining order I imagine they would (have) filed suit.

I selected Mr. Hershey as an accountant, and he was approved by the courts in the four jurisdictions here in the West.

(Interrogated by the MASTER.)

Q. Do you mean by an order entered to that effect?

A. I don't understand it well enough to know that. The action that was taken was this: I selected Mr. Hershey and his name appears in the application to the Court.

(Direct Examination by Mr. CROSBY (Resumed).

I communicated with the store managers. The first communication was by wire, informing them of my appointment as Receiver. As soon as the receivership was perfected here in the California [314] jurisdiction we proceeded to Oregon and Washington, that is, eastern and western Washington, for the same purpose. While up there I

(Testimony of A. F. Lieurance.)

called on the managers of the stores, I mean I called the managers of the stores together at Portland, Oregon, for a conference, and to instruct them in their duties and the conduct of the business under the receivership. In other words, we had a convention up there at the Portland Hotel in Oregon.

Q. Did you communicate thereafter with the store managers, by communications, in which you gave them definite instructions as to what they were to do?

A. I communicated with them by issuing bulletins, which is one of the best means of conducting a chain store business, and also by personal letters in regard to matters that pertained to the individual stores. Where the stores were involved collectively, they were instructed by bulletins. Of course, when I came into personal contact with the managers we went over the matters.

There is here a copy of a questionaire that was sent to each of the stores that I might get a better mental picture of the condition that obtained in each of the individual towns and in each of the individual stores. Then there are bulletins of special instructions.

The questionaire which I sent out to these various managers were all answered, and they came back to me and I checked them.

(Counsel for plaintiffs offered in evidence the first letter with the questionaire; and before this

offer was acted upon, the following discussion and statements by and between counsel took place:)

Mr. HENEY.—I will say now that I have not any doubt about the competency of Mr. Lieurance in managing that business.

Mr. CROSBY.—Will you concede that Mr. Lieurance, as Receiver, here, has given detailed and all reasonably necessary attention to the duties devolving upon him in this receivership, and in the management [315] and conduct of the stores, and in relation to all matters in his receivership here?

Mr. HENEY.—I am not quite certain from hearing that whether it would include the question whether or not he was extravagant in the conduct of it.

Mr. CROSBY.—If it is agreeable to you, you may withhold any concession on the question of extravagance and you may challenge it, if you desire, in the proceedings here. We are ready to meet it. If you will make the other stipulation it will save us a lot of time in presenting this detail. If you wish to challenge his extravagance, you can withhold that now from the stipulation.

Mr. HENEY.—I am willing to admit that he conducted it very efficiently.

Mr. CROSBY.—That is, throughout the sales, as well as the conduct of the business, and clear to the end of his service?

Mr. HENEY.—You mean the bulk sales?

Mr. CROSBY.—The bulk sales, and the individual sales over the country, and in all of the work

(Testimony of A. F. Lieurance.)

having to do with the conduct of the business. We will ask you to concede that he performed that service efficiently, and conscientiously, and economically.

Mr. HENEY.—I won't do that. I will concede that he performed it efficiently.

(Whereupon, the questionaires above referred to were introduced and received in evidence, and were collectively marked as Receiver's Exhibit 9.)

Direct Examination of Witness LIEURANCE by Mr. CROSBY (Resumed).

When I concluded to sell the stores, I made up data in the way of information to prospective purchasers regarding them. I made up a complete statement of all the information which I could possibly get. I sent it to all prospective purchasers that made inquiry about the business; I sent them to a number of people whom I know in the merchandise business and who might have been interested in [316] acquiring this property. I sent out 100 copies. The persons to whom I sent these statements were located west of the Mississippi River. They are people engaged in the same class of business. I know these people.

The document just shown to me, marked "Office A. F. Lieurance and Arthur F. Gotthold, joint receivers R. A. Pilcher Co., 1201 Central Bank Bldg., Oakland, California," is a copy of the data that I assembled and sent to the prospective purchasers that I have referred to. It contains the conditions

(Testimony of A. F. Lieurance.)

of the sale and information regarding stores and stocks.

(The document just identified was then offered in evidence by the plaintiffs, and was received without objection and marked Receiver's Exhibit 10.)

Before preparing and assembling that information and sending it out, I had personally investigated the conditions of the stores, and their status.

There is set forth in the statement filed by myself here, the aggregate claims, and the amount that I reduced by adjustment, and the number of preferred claims; also the net cash received by me from the sales of the stores.

I made a thorough investigation of the leases upon which the Pilcher Company had obligated itself in relation to those various stores. I procured the leases, and made a list of the conditions of each of these leases, or I caused it to be made.

Q. I show you this document marked "Pilcher Co., Roseburg, Oregon, lease," and ask you to state whether or not you have therein set forth a transcript of the leases, in regard to their terms, and their obligations, etc.?

A. Yes. The individual leases are set forth here. However, a copy of the compilation and the results is not attached to this copy. There is a recapitulation of all of those and the amounts involved.

Mr. HENEY.—Mr. Crosby, will you ask him whether he did that, [317] or whether his attorney did it?

(Testimony of A. F. Lieurance.)

A. (Continuing.) I caused it to be done.

Q. Mr. Lieurance, did you, yourself, individually keep in touch with and obtain and have in your mind information in relation to all matters pertaining to this receivership, here, in your jurisdiction?

A. I obtained the leases and had Mr. Eliassen go over them for the purpose of determining the status of those leases, the contracts, etc., and what they involved.

I personally learned what the status of those leases was in each instance. The information is contained in the letter of instructions to buyers, or in the letter of information to buyers.

Q. Now, Mr. Lieurance, let us have this understood. I want to know whether or not you submitted matters such as those leases, or any other matters, to any of those who were in your employ, whether it be your attorney, or anyone else, and then ignore the result of their observations or investigations?

A. I don't think I have ignored anything; if I have I don't know it.

Q. Then all information gained for you directly, or for you through those associating with you, you received that information from them all: Is that correct? A. Yes, I did.

The MASTER.—Do you offer this document?

Mr. CROSBY.—Yes. That is to show the general value of the leases in question here.

Mr. HENEY.—We conceded that when we con-

(Testimony of A. F. Lieurance.)

ceded his efficiency. We don't think he would ask his attorney for information about those leases and then never get the information from his attorney.

Mr. CROSBY.—I just want to have it understood that he kept directly in touch with this whole business from start to finish.

Mr. HENEY.—I haven't any doubt of that.

The MASTER.—I will receive it, and it will be marked Receiver's Exhibit 11." [318]

Direct Examination of Witness LIEURANCE by Mr. CROSBY (Continued).

I had an aggregate of the financial obligations, under the leases, compiled by the accountant, and I have figured it, myself, several times. I don't recall the exact figure which it reached; but it is nearly a million and a quarter dollars,—that is the unearned value of the contracts. I think that in carrying on this business in these various stores as a going concern, that assisted me in relieving the estate of the obligations of the leases.

Q. In what respect?

A. Some of the leases were made for a period of three years, and others up to as high as twenty years, and the landlords were, of course, interested in keeping their buildings occupied and having tenants for them, and since the business had gone into the hands of receivers there was every likelihood, in their minds, that it would be closed out soon. I could not give them any definite information as to whether it would be closed out or whether

(Testimony of A. F. Lieurance.)

it would be rehabilitated and carried on, but I did inform them that every effort was made, or, rather, that every effort would be made, if the business had to be closed up, to procure desirable tenants for them, or to interest people in the property who wanted to carry on the business, and we succeeded in doing that. As a result, there were no claims filed against the leases.

I mean there were no claims filed against the estate for the unearned portion of the lease contracts.

To the best of my knowledge, the statements contained in the statement which I have filed here, are correct. The statement, as you know, was not prepared for filing; it was a statement prepared for your benefit, and information, and mine. We filed it here. It has not been given all the attention that it might have been given if it had been prepared for filing. It is true.

I have received letters from creditors relating to my conduct of this business and the matter of my compensation. [319]

(Mr. Crosby stated that the letters referred to had been filed in the case; and stated that he desired to offer those letters in evidence.)

(Interrogated by the MASTER.)

The amount of the claims upon which dividends have been paid is approximately $724,000. The original claims were $747,000, and they were reduced to $724,000; that is, they were reduced through adjustment, and through negotiations with

(Testimony of A. F. Lieurance.)

the claimants. That includes preferred claims and everything. There were not many preferred claims, only approximately about $5,000. There were many claims filed as preferred claims but that is all that was allowed. The 40% dividend was paid on $719,000 because the preferred claims built up the $724,000.

Direct Examination by Mr. CROSBY (Resumed).

Then there was an additional dividend of 10%, making an aggregate of 50%. There has been 50% paid on the general claims. The preferred claims were settled before the Master.

Q. Were the Receivers' certificates all settled, all paid?

A. Absolutely every dollar has been paid. We bought $100,000 worth of merchandise. That was paid for. Everything has been paid. Court costs have been paid. So far as I know there is not one nickel remaining unpaid.

I bought $100,000 worth of merchandise in the conduct of the business, and to keep the stores replenished. I gave personal attention to the matter of balancing the stock in the various stores.

When we took the inventory, there were some very undesirable features from a merchandising standpoint. The inventory involved at cost just a little less than $600,000—$599,717, or approximately that amount. That was at the original cost of the merchandise. I might state that a liberal portion of that was bought at pretty high prices; it was higher

(Testimony of A. F. Lieurance.)

than I have been in the habit of paying for merchandise. There was approximately $100,000 worth of ladies' [320] ready-to-wear, and kindred lines, coats, dresses, suits, and merchandise of that nature that had been bought for the spring season, and the spring season was just about past. That merchandise deteriorates very rapidly. The element of style is almost everything in the value of such merchandise. However, we took this merchandise in at cost, at its original cost as shown by the Pilcher Co. There was a considerable portion of cheap jewelry; someone had been permitted to send a lot of jewelry to these various stores, and, if I am not mistaken, the aggregate of it was about $10,000. It was the kind that turns green in a few days. In addition to that there was a big lot of overcoats that had been bought from the Black Manufacturing Co. as a job lot. They could not be disposed of in the summer time. There were about 2,000 of those coats, and, if I am not mistaken, they cost about $13 apiece, or $12 apiece, or something like that. Then, too, this merchandise, or quite a lot of it, was too high priced for the people in the communities where they were trying to sell it to get the people to consume it; they don't buy merchandise of that character, or that quality. They had in these stores Nunn-Bush shoes; they are a very high-grade shoe, and they are not adapted to communities of that kind. You can sell a few pair, but to carry them in stock they are virtually a frozen asset. That condition prevailed in the

(Testimony of A. F. Lieurance.)

ready-to-wear lines, too. Dresses in those stores would sell as high as $75 or $80, and some as high as $150; they won't go in the country towns. The people cannot consume them at those prices—at least that has been my experience.

We sold over the counter just a little under $500,000.00 worth of merchandise during the five months we conducted the business. In addition to that, we sold the stores out for $257,600, making in all a total of approximately $750,000.

I received various bids on these stores, accompanied by certified checks. We deposited those checks in the bank, and ran [321] them just the same as money received. We didn't know who the successful bidder would be. After the stores were sold we returned to the unsuccessful bidders the money they had deposited with their bid, which was 20 per cent of the amount bid.

Q. What means did you take to rid the institution of these goods you found to be hardly marketable, or, at least that were questionable as to their marketability?

A. The season for the ready-to-wear goods had passed, or had virtually passed, and the season for the overcoats was not here yet, and they involved considerable money. We resorted to sensational tactics in order to get rid of the ready-to-wear over the counter, and we obtained a pretty good price for it. We realized $499,000 worth of sales and disposed practically of all of this ready-to-wear.

(Testimony of A. F. Lieurance.)

Q. These tactics that you refer to, just what do you mean by that? A. Sales.

Q. Do you mean special sales, and things of that character?

A. Yes, and advertising campaigns, and any legitimate business tactics that will permit the sale of any particular item you want to dispose of, or, for that matter, the stock generally.

From the time that I was appointed, and assumed the duties of Receiver, all of my time was given to this business. That time was not limited to the usual working hours of the day; you cannot run chain stores that way if you take any interest in them; it was day and night. I didn't pay any attention to holidays and Sundays when I had work to do. I certainly did have lots of work to do in relation to this business. I worked many Sundays and holidays in connection with this business, and many, many nights; I worked more nights than nights I did not work. It was all in connection with this business.

(Counsel for plaintiffs offered in evidence the stipulations pertaining to the reduction of the temporary allowances; such stipulations being four in number, and entitled, respectively, in the [322] four several District Courts of the United States hereinbefore referred to as the "Western Jurisdictions"; all being entitled in the matter of "Sidney Gilson, et al., Complainant, v. R. A. Pilcher Co., Inc., Defendant"; and which stipulations were

received in evidence and collectively marked Receiver's Exhibit 12."

All of such stipulations, constituting Receivers' Exhibit 12, received in evidence as above stated, were exactly the same, except as to the title of the court and the dates and the amounts of the original allowances and the amounts of the reduced allowances, respectively. Therefore, a copy of only one of these stipulations will be sufficient, and for that purpose the stipulation in the case pending in the Northern District of California has been selected and which reads as follows:

(Title of Cause.)

"STIPULATION.

WHEREAS, upon ex parte application, the above entitled Court by its order made on the 10th day of December, 1926, did, among other things, grant and allow to the Receivers, A. F. Lieurance and Arthur F. Gotthold,to apply on account of services rendered by them in the above entitled proceeding, the sum of Ten Thousand Dollars ($10,000) to be divided as follows: Seventy-five per cent (75%) thereof to Receiver Lieurance, and twenty-five per cent (25%) thereof to Receiver Gotthold; and

WHEREAS, by the same Order the said Court authorized and allowed a payment to Edward R. Eliassen, Esq., attorney for the Receivers, of the sum of Ten Thousand Dollars ($10,000) to apply on

account of services rendered by him as such attorney in the premises; and

WHEREAS, objections to the amounts of the aforesaid allowances have been made,

NOW THEREFORE, for good and sufficient reasons and considerations, it is hereby stipulated and agreed as follows: [323]

First: That said allowance of Ten Thousand Dollars ($10,000) to said Receivers A. F. Lieurance and Arthur F. Gotthold shall be reduced to Three Thousand five hundred Dollars ($3500), which amount shall be payable solely to Receiver A. F. Lieurance, his Co-receiver Arthur F. Gotthold, having waived participation therein, and said A. F. Lieurance having done all the work of the Receivers within this jurisdiction;

Second: That said allowance of Ten Thousand Dollars ($10,000) to Edward R. Eliassen, Esq., attorney for said Receivers, be reduced to Five Thousand Five Hundred Dollars ($5,500);

Third: That said reduced allowances shall not be further reduced;

Fourth: That by consent of the respective parties hereto said Order which was made by the above entitled Court on the 10th day of December, 1926, shall be amended to conform to the terms and conditions of this stipulation;

Fifth: That the above entitled Court shall have the exclusive right to fix the fees and compensation of the Receiver A. F. Lieurance, and the fees and compensation of Edward R. Eliassen, attorney for the Receivers in the above entitled proceeding,

whether or not any further proceedings are taken in bankruptcy proceedings now pending or in any other bankruptcy proceedings that may be instituted hereafter.

Sixth: That the final fixation of the fees of A. F. Lieurance as Receiver, and of Edward R. Eliassen, as attorney for the Receivers in the above entitled matter, shall be made by the above entitled Court at the time of the hearing on the final account of the Receivers herein, and that notice of the time and place of such hearing shall be given to all of the known creditors of the defendant company by mailing notices to them at their last known addresses at least thirty days before such hearing and that no other or further fixation of their respective fees shall be made [324] by said Court in the meantime.

Seventh: That this stipulation shall not be construed to be any limitation whatever upon the right of said Receiver Lieurance or of his said Attorney Eliassen, at the time of such final fixation of fees, to apply for or receive additional fees or compensation for services either heretofore or hereafter rendered by them or either of them; or upon the right of any creditor or creditors to oppose or contest any such application or applications, if and when so made.

Dated: February 1st, 1927."

(Signed) "A. F. LIEURANCE,
EDWARD R. ELIASSEN,
CREDITORS' COMMITTEE REPRESENTING EASTERN CREDITORS OF R. A. PILCHER CO., INC.,
By WALTON N. MOORE,
Member and Authorized Representative.
CREDITORS' COMMITTEE REPRESENTING WESTERN CREDITORS OF R. A. PILCHER CO., INC.,
By WALTON N. MOORE,
Chairman.
JOSEPH KIRK.
FRANCIS J. HENEY,
Attorney for the Above-mentioned Committees and the Creditors Represented by Such Committees Respectively." [325]

(Thereupon, counsel for plaintiffs offered in evidence the letters from creditors, above referred to, relating to the "conduct of this business" by Receiver Lieurance, and the matter of his compensation; which letters were on file in this proceeding; and which letters were read into the record, as follows:)

(Letter-head of the Weber Show Case & Fixture Co.)

Los Angeles, Cal. U. S. A. August 9, 1927.

"To the Honorable, the Judge of the District Court of the United States, San Francisco, California.

Dear Sir;

It has come to our attention that Mr. A. F. Lieu-

rance and his Attorney, Mr. Eliassen, have met with certain opposition in the matter of the settlement of the financial accounts of the Receivers in the Pilcher matter.

Our claim was probably one of the largest in this matter (being over $35,000) and we, therefore, know that this receivership possessed many complications and was very difficult to handle. These men have done a splendid piece of work and we feel that their efforts should be recognized to the extent that nothing is done to hinder the winding up of this matter.

We want to go on record as not raising any objections to the fees being paid according to the court's order.

Yours very truly,
WEBER SHOWCASE & FIXTURE CO.,
Secretary.

CC to Mr. William Frazer,
c/o J. P. Stevens Company,
27 Thomas Street, New York City, N. Y."

(The foregoing letter is filed in this proceeding and contains the Clerk's Number "62.")

(Copy of letter to William Fraser.)

July 27, 1927.

Mr. William Frazer,
c/o J. P. Stevens Company,
27 Thomas Street, New York City, N. Y.

Dear Mr. Frazer:

Mr. A. F. Lieurance called on me today and in going over the Pilcher matters he tells me that from certain quarters there have been objections made to his fees for administration, as well as his attorney, Mr. Eliassen's. [326]

I am strongly of the opinion that these men have done a splendid piece of work, as I have written you before, and I do not believe that any steps should be taken from any quarters to hinder the winding up of this very unfortunate matter, but these men should be allowed to draw what they are entitled to or the amounts the different courts have awarded them as ad interim allowances in December.

I want you to know that the A. V. Love Dry Goods Company, or the writer, has not been or is not a party to any objections that have been raised to these fees being paid according to the court's order, and as you know we are one of the heaviest creditors.

I have not been able to see nor understand why there should be any steps taken in New York City to throw this matter into bankruptcy as I cannot see wherein there was even a chance that the creditors could get one more dollar by proceedings of this kind. On the other hand I can see where a great deal of expense could be created and thereby knock the creditors out of just that much money. You must know that the assets of this company were on the Pacific Coast and that the work was actually done out here and that any compensation that should be rendered should be to those who did the work, and that was on the Pacific Coast by Mr. Lieurance and his attorney.

Therefore, I sincerely hope that you will use your

(Testimony of A. F. Lieurance.)

influence to have this unfair opposition towards Mr. Lieurance and Mr. Eliassen withdrawn.

Sincerely yours,

A. V. LOVE DRY GOODS COMPANY.

A. V. LOVE,

President.

(The foregoing letter is filed in this proceeding and contains the Clerk's number "64.")

Direct Examination of Witness LIEURANCE by Mr. CROSBY.

I know Mr. A. V. Love personally. He was a member of the New York Creditors' Committee.

Q. Was he a member of the Western Creditors' Committee?

A. Well, I don't know what you refer to as the Western Creditors' Committee.

Q. Was there any such committee in the west, here, as there was in the east?

A. Not unless it was the Board of Trade in San Francisco.

(Thereupon, the remaining letters above referred to were introduced in evidence and read into the record as follows:)

(Letter-head "The Journal-Afternoon-Sunday.")

"Portland, Oregon, September 6, 1927. [327]

A. F. Lieurance,

Receiver R. A. Pilcher Co.,

Central Bank Bldg.,

Oakland, California.

Dear Sir:

Our attention has been called to the fact that a

remonstrance has been filed against the allowance of the fees for the attorney and receiver in the above matter.

The Journal, as a creditor of the estate, is well pleased with the manner in which its business has been handled and the dividend that we have received is unusually large under the circumstances.

We take this opportunity to assure you that we have no objection to any fees for both the receiver and the attorney that the court has or may allow in this matter. We feel perfectly satisfied that the court will treat both the receiver and his attorney and the creditors justly and fairly.

Yours very truly,
JOURNAL PUBLISHING CO.,
By Julia Holiday, Secretary."

(The foregoing letter was filed in this proceeding and contains the Clerk's number "60.")

(Letter-head of LOWENGART & COMPANY.)

"Portland, Oregon, September 7, 1927.

Mr. A. F. Lieurance,
Receiver of R. A. Pilcher Co.,
Central Bank Building, Oakland, California.

Dear Sir:

We have just heard that certain creditors of the Pilcher Company have objected to fees that have been allowed by the Judges of the United States Court to you and your attorney for services rendered.

(Testimony of A. F. Lieurance.)

We, as creditors of the Pilcher Company, have been well satisfied with the work that you and your attorney have done. The results you have obtained have been satisfactory to us. We are perfectly willing and satisfied that the Court, which has knowledge of all of the work that has been performed, fix a fee that it thinks fair and reasonable for you and your attorney.

There will be no objection on our part to this procedure which we think is fit and proper.

Yours very truly,

LOWENGART & COMPANY,

H. CLARK,

Credit Mngr."

(The foregoing letter was filed in this proceeding and contains the Clerk's Number "61.") [328]

Cross-examination by Mr. HENEY.

(A letter which appears to have been sent out by the Creditors' Committee, dated May 28, 1926, was shown to the witness.) I don't remember ever having received a copy of this letter. I would have to refer to my record here to ascertain that.

(The letter was left with the witness to enable him to examine his record with reference to it.)

Referring to the conversation which occurred in Mr. Kirk's office on December 9, 1926, when Mr. Walton N. Moore was present: Mr. Eliassen and I met Mr. Moore in his store on Mission Street and went over with him to Mr. Kirk's office; that was the beginning of the conference. I think we went

(Testimony of A. F. Lieurance.)

to Mr. Moore's office in response to a request from Mr. Moore, by telephone.

Q. Now, tell us what occurred in Mr. Kirk's office?

A. We were informed either by Mr. Moore or Mr. Kirk that a telegram or some communication had been received from New York in regard to fees and compensation of the Receivers. It developed that there had been an application made in New York by McManus, Ernst & Ernst, and also by Mr. Gotthold, for interim allowances to the attorneys and the Receivers in New York. They had referred —someone, Mr. Frazer, I believe, had referred the matter to Mr. Moore, in San Francisco, who was a member of the Creditors' Committee and had also referred the matter to Mr. A. V. Love, of Seattle, Washington, who was a member of the Creditors' Committee. In the conversation, or in the—

Q. Pardon me just a moment, Mr. Lieurance. I show you a copy of a telegram, I think it is of December 8, 1926; examine that and see if that is the communication to which you refer in your testimony just given.

A. I never saw the telegram, Mr. Heney. I don't know. I could not identify this. I didn't see it. It just developed in the conversation that some communication had been received. The telegram, as I remember it, was not read. [329]

Q. Was the substance of it stated?

A. The purpose of it was stated. I do not know that it was given in any detail. That was the sense

(Testimony of A. F. Lieurance.)

of the meeting, that they wanted some information in regard to the allowances that were to be made to the attorney and the Receivers.

The MASTER.—Q. There, or here?

A. It covered the whole jurisdiction, that is, the whole administration in all of the jurisdictions.

I could only state in substance what was said,—the sense of the meeting. Mr. Moore and Mr. Kirk were desirous of knowing what allowance on account Mr. Eliassen and I would ask for. We told him that that was a matter that we had not fixed upon, we had not fixed the price, and preferred to leave that to the Court. Mr. Moore said he thought that was as fair as could be done. Mr. Kirk drafted a telegram to Mr. Fraser in New York, in the presence of Mr. Eliassen, and Mr. Moore, and myself, and the telegram is a matter of record. That was the sense of the meeting.

I do not remember anything else that was said while Mr. Moore was present,—no specific thing, just the general conversation.

Prior to this time, I heard that Judge Hand had signed an order directing the Receivers to pay the creditors 40%. I believe it was stated in that meeting.

Q. Did either Mr. Moore or Mr. Kirk state in that conference while Mr. Moore was present that the Receivers had applied in New York for a partial allowance of $10,000 to be equally divided?

A. I don't remember that the amount was stipulated. I knew the amount at that time, because I

(Testimony of A. F. Lieurance.)

had received, I think, a telegram from McManus, Ernst & Ernst, or from Mr. Gotthold, stating that they were going to make an application for $10,000, an allowance of $10,000 to the attorney and to the receiver in New York. I don't remember whether it was stated in that conference, or not, but I knew that. [330]

I think the telegram that I refer to stated that the $10,000 was to be divided between the Receivers equally. That fact was discussed with Mr. Moore, on the way over from the store to Mr. Kirk's office. Mr. Moore advanced the idea that Mr. Gotthold had done none of the work in the western jurisdiction and, therefore, was not entitled to any fee, and that I had done all the work out here and it should be so considered that way. I did not say that Mr. Gotthold was not entitled to any fee in New York, he said in the western jurisdiction, because he had done none of the work here.

Q. Did he also suggest the idea, or was the statement made, that $10,000 was to be applied for the Receivers in New York and to be divided equally?

A. I don't know that the statement was made in the conference.

Q. Was it made on the way over to the conference?

A. It was discussed somewhere; and I think that is where it was.

Mr. Moore said that he thought I ought not to participate in the fee that was granted in New York; I expressed agreement with him on that.

(Testimony of A. F. Lieurance.)

Mr. Moore stated that he considered that the $10,000 that was applied for, for the attorneys in New York, was excessive for the amount of work they had done. I could not state definitely whether that was said on the way over or whether it was in the conference. It was the general concensus of the meeting, or the opinion of the meeting, rather, that the fees asked for in New York were excessive for the amount of work done.

I didn't express any view. I could not state definitely that Mr. Eliassen, in that conference, expressed the view that the fees asked for in New York were excessive. I could not state definitely that he did not.

I don't recall that in that conference, it was suggested that Judge Hand had invited suggestions from the Committee of Creditors as to the amount to be allowed. I had that information from Mr. [331] Love in a telegram from Seattle, so I was aware of the fact. Whether I got it there or whether I got it in this conference, I don't know. I might have gotten it in both places.

Q. Was it stated that the committee in New York wanted to know what the total amount that Lieurance and Eliassen were going to ask so as to put them in a position to be able to make recommendations to Judge Hand in regard to allowances in New York?

A. It was the understanding that they wanted information as to how much we would ask for. What the purpose was, I don't know.

(Testimony of A. F. Lieurance.)

Q. Was it not stated what the purpose was?

A. I don't recall that it was stated what the purpose was.

Q. Was not the telegram that Mr. Moore had received from William Fraser the telegram of December 8, 1926, wasn't it lying there on the table during this discussion at Mr. Kirk's office?

A. My recollection is that Mr. Kirk had the telegram.

Q. In his hand? A. I am not sure.

Q. Did not Mr. Kirk state the substance of it?

A. Just in a general way he stated that he had received, or that Mr. Moore had received this communication.

Q. Did he not read it?

A. I don't recall that he read it. I don't think he did.

Q. Have you a positive recollection on that subject?

A. I could not say positively, but I don't remember its ever having been read. The substance of it was generally known.

On the way over, Mr. Moore told us that he wanted us to go to Mr. Kirk's office, for the purpose of a conference in regard to this matter of fees and compensation. I could not state positively that he told us that it was on account of a telegram he had received from William Fraser, but I think he did.

Q. Didn't he tell you the nature of the information in it?

A. I don't know whether I got that information

(Testimony of A. F. Lieurance.)

from him or whether I got it from Mr. Love's telegram. I got the information, all right. [332]

So that when we went to Mr. Kirk's office I knew what the purpose of the conference was. I didn't go there blindly.

There was something said in regard to the fact that Ernst intended to apply for an additional $10,000, as a final payment.

Q. Did not Mr. Eliassen express the opinion that $20,000 was too much for the work that had been done by the attorneys in New York?

A. In the one jurisdiction, I think so.

Q. Do you recall anything being said about the advisability of a statement being prepared by Mr. Eliassen and yourself as to services performed, to be used as a basis for discussion by the Creditors' Committee and the attorneys in the east, to reach a conclusion as to what would be fair compensation for each of the Receivers and the attorneys here and in New York?

A. There never has been any statement asked for.

Q. Do you recall anything being said on the subject in that conference? A. I do not.

After Mr. Moore left Mr. Kirk's office, Mr. Kirk spoke of having collected a number of claims through the Board of Trade, and stated that he had sent those to New York. It developed after those claims had been sent to New York that the disbursements of the funds of the dividends to the creditors, would be paid from here. He wanted to know that those claims would have the same standing and the

(Testimony of A. F. Lieurance.)

same attention as though they had been filed here, and I prepared a stipulation, or some sort of a paper of that kind, and asked Mr. Eliassen if he would so stipulate that those claims should be considered as though they had been filed with me in Oakland. Mr. Eliassen acceded to the demand or request, and the stipulation was signed.

Q. Did not Mr. Eliassen already have that and bring it with him; had he not received it previously from Mr. Kirk, and did he not bring it with him?

A. I don't know. I know that the stipulation was produced. Whether [333] Mr. Kirk produced it or whether it had been sent to Mr. Eliassen previously, I don't know.

Q. Do you remember anything else that was said on that occasion?

A. Mr. Eliassen said, "We are going out to court in the morning in the matter of this 40 per cent. dividend and the matter of our allowances on account." He asked Mr. Kirk if he would be there. Mr. Kirk said he did not suppose it was necessary, or words to that effect. Mr. Eliassen told him he would take the stipulation, or whatever it was, to court then and have it filed, or get an order, or do whatever was necessary to do. Mr. Kirk thanked him for the courtesy. The last thing that was said, as I remember it, in the matter of the allowances to myself and Mr. Eliassen, was that whatever to the Court may seem fair and equitable would be all right. We then bade him good-day and left.

(At this point, counsel for plaintiffs stipulated

(Testimony of A. F. Lieurance.)

concerning the matter of Mr. Eliassen bringing those papers over from Oakland as follows: It will be stipulated that they had been sent to Mr. Eliassen by Mr. Kirk, and on that day were brought over by Mr. Eliassen to Mr. Kirk's office.)

Q. You say that Mr. Eliassen said to Mr. Kirk that he was going out the following morning to present not only the order for the 40 per cent dividend, but also to have a hearing on his petition for the allowance of fees to the Receiver and himself on account. A. Yes.

Q. And Mr. Kirk did not say anything except to say it was all right?

A. Mr. Eliassen asked him if he would be there and he said he did not think it was necessary, or words to that effect.

Mr. Kirk dictated, in my presence, to a stenographer, the telegram which Walton N. Moore signed, being a telegram to William Fraser dated December 9, 1926.

Q. Did you hear him make this statement in dictating the telegram: "I earnestly request that the question of such allowances be deferred for time being until Receivers and attorneys and committees [334] can exchange views and come to some agreement concerning gross amounts to be asked for"?

A. I did.

Q. What discussion, if any, was there at the conference when that statement was dictated by Mr. Kirk?

A. There was no discussion regarding the tele-

(Testimony of A. F. Lieurance.)

gram. That was Mr. Kirk's telegram, that is, as I remember it. The sense of the meeting, and the sense of the understanding was—

Q. Just a moment, I object to that. I want to know what was said. We will draw our own inferences as to the sense of it.

A. All right. Just the telegram was dictated.

Q. Was there anything said at the time that statement was dictated by Mr. Kirk, was there anything said by anybody present as to whether or not that was correct?

A. I don't remember that there was anything said.

Q. Or was there any discussion about it?

A. I don't remember that there was any discussion about it at that time.

I state that there was approximately $100,000 expended in the purchase of goods, in continuing the business. The bulk of those goods were purchased west. Some were purchased from the Walton N. Moore Dry Goods Company, and some from the A. V. Love Dry Goods Company. As a matter of fact, I think the largest purchases were from the A. V. Love Dry Goods Company, because most of the stores were near to that source of supply. Some shoes were purchased in St. Louis. Other merchandise was purchased here in San Francisco,—they were purchased at various places that had the merchandise, some in Portland, Oregon, wherever the nearest source of supply was, that is where the merchandise was ob-

(Testimony of A. F. Lieurance.)

tained. Some of it was purchased from the Spokane Dry Goods Company.

I think the account here shows the total amount that was purchased from Love & Company; I don't know just in what order it is given, but it would show the amount paid. [335]

(It was stated by counsel that the books were in Oakland at that time but that the amounts would be furnished later; thereupon, the witness continued as follows:)

I would hazard a guess at the amount, and I think I know pretty close to what it is, but I don't want to be held too strictly to that. If I am not mistaken I think it is approximately $30,000 from the A. V. Love Dry Goods Company. Now, when I say $30,000, that is giving it in round figures; it might be $32,000, or it might be $28,000. I may be wrong entirely, but I think that is the amount, or close to it, if my recollection serves me right.

I have known Mr. Love for about ten years. I have had numerous transactions with him, for the Penney Company. The aggregate volumes of those transactions was very large.

Q. You and he, then, have been somewhat intimate friends during this period?

A. Only in a business way. I found him the very soul of honor, and a perfect gentleman to do business with. He always has been.

Q. Both found the connection profitable?

A. It was profitable for me. I don't know whether it was profitable for Mr. Love, or not. Evi-

(Testimony of A. F. Lieurance.)

dently it was, or else he would not have carried it on.

I had talks with Mr. Love about the attitude of some of the Creditors' Committee in regard to the fees of the Receiver and of the attorney, after those allowances on account were made. I don't know that it was before they were reduced, but I have had several talks with Mr. Love; in fact, every time I go to Seattle I have a talk with him. I mean since those allowances were reduced.

Q. Did you tell him in one or more of those talks that you believed that the opposition of Mr. Moore and Mr. Kirk came from the fact that you believed Mr. Kirk had a feeling against you and Mr. Eliassen, on account of not having been taken into this matter? A. I probably did. [336]

Q. Can you tell us the substance of what you told him?

A. I have some letters here that I have written to Mr. Love that speak for themselves, if you would like to introduce them. I have kept him informed continually regarding the developments in this business, and regarding all of the controversies that we have had, because he is a member of the Creditors' Committee, and I felt it my duty to do that, and I have done it.

The letters are right here. There are quite a lot of them, throughout the whole administration.

(The letters referred to were produced and handed to Mr. Heney for his examination; and the witness continued:)

(Testimony of A. F. Lieurance.)

All the information that has been given to Mr. Love by letter has been repeated verbally in our conferences, or in our visits, or whatever you want to call them. The sense of the whole thing is contained in these letters.

Q. What was it you told Mr. Love about there being any effort in New York to throw this matter in bankruptcy?

Q. Nothing lately. It was early in the course of the administration.

Q. You mean the information contained in the original document you got, that a bankruptcy proceeding was started for the purpose of stopping attachments?

A. I don't know why Mr. Love refers to bankruptcy there, but that has been a sore spot with Mr. Love always, the threat of bankruptcy, etc., and he has had numerous communications from various sources, in New York principally—I say "various sources, he has had information from time to time and I judge from his attitude toward it, and from his conversation with me, that that has been a little sore spot with him. He did not want the bankruptcy.

There was a petition filed in bankruptcy but I think it was never carried through. The petition had not been filed before I came into the transaction. I think it was some time afterward, quite a little time afterwards. The petition in bankruptcy was not to [337] stop attachments. The Court rather restrained everybody and everything. I don't know

(Testimony of A. F. Lieurance.)

whether that took away the preferential rights of an attachment; I could not tell you. I remember the letter or telegram from McManus, Ernst & Ernst, relating to that subject, which was produced in evidence here this morning.

Q. And they started the bankruptcy proceedings for the purpose of killing off these attachments, and then didn't go ahead with it, but proceeded with the receivership?

A. That was virtually the purpose, as I remember it, as stated in the McManus letter.

Q. And don't you know that they are now in a position where they have arranged with the bankruptcy referee there that when they get all through with the receivership that they are to account in the bankruptcy court?

A. I know there have been some steps taken in bankruptcy, but I could not tell you just what they are, Mr. Heney.

I don't think that I did any advertising in the "Journal" at Portland, Oregon, during the time that I was putting on these advertising sales that I have described. I might have. I would not be sure about that. The placing of the advertising, after it was prepared, was left to the store manager. He might have advertised in the "Journal," or he might have advertised in the "Oregonian." I don't know what paper he advertised in. He advertised in a paper that had a good circulation.

Q. Mr. Crosby wanted me to stipulate with him here this morning that you knew all the details of

(Testimony of A. F. Lieurance.)

this business. Now, you say you did not know where the advertising was done?

A. Not in that particular case, I don't know whether it was in the "Journal, or in the "Oregonian." I could not tell you.

Q. Do you know whether or not they did any advertising in the "Journal"?

A. No, I could not testify to that. Portland is a big city. Different papers reach different classes of trade, just like in San Francisco or any other city. If that is [338] the paper that reached the particular trade that we were after, that is the paper the advertising was done in. In the smaller towns there is a paper that dominates the whole situation.

Q. What class of trade were you after in Portland, and I can tell you whether the "Journal" would reach it.

A. Well, these stores catered to the popular-price trade, not the silk-hat trade, as it is called, as it is commonly referred to. We just wanted to reach the medium-priced trade with that merchandise.

I don't know whether the Penney Company was in the habit of placing any advertisements in the "Journal." Those are matters which are left to the store manager. I have no relation whatever with anybody on the "Journal." I don't know anybody there. I could not have told you that there was a "Journal."

I don't know how the Journal Publishing Company came to write this letter of September 6, 1926,

(Testimony of A. F. Lieurance.)

unless it was through the efforts of Mr. Stott, the local attorney up there. I don't know that that is right, either, but that is the only source that I can imagine. Mr. Eliassen employed Mr. Stott to do some work up there in the receivership; I did not employ him.

Q. Do you know how the Weber Showcase & Fixture Co., of Los Angeles, came to write this letter?

A. I think Mr. Eliassen wrote them a letter, or maybe I wrote it, I am not sure; I think Mr. Eliassen wrote those people and told them the situation, and that is the response.

(Counsel for the objecting creditors then asked for a copy of the letter referred to; after some discussion, the witness further testified upon the subject, as follows:)

I am not sure whether there was a letter written about that. I rather doubt it, on second thought. If I am not mistaken, I rather think that letter is the result of some verbal conversation with the attorney for the Weber Showcase Company.

Q. Between you and him?

A. No, I have not seen him since [339] the time it came. I don't know now that that is right. I might be mistaken about that. I don't know where that information came from.

Q. Verbal conversation between whom?

A. Between Mr. Eliassen, I think, and this attorney. They were up here in the interest of their claim, that is, they were up in Oakland in the in-

(Testimony of A. F. Lieurance.)

terest of their claim. That is how I came to meet them.

Q. By the way, the fixtures of these stores, the value of them was not included in the approximate amount of $600,000 that you mentioned in your testimony, was it?

A. No. There was a peculiar condition in regard to the fixtures. The majority of them had been supplied by the Weber Showcase Company on the lease contract plan. Through clauses in these contracts they retained title. They had several options, either of which they might have exercised. They retained title to all of the equipment until it was paid for. So the fixtures were not paid for. Something was paid on account. There was no way of arriving definitely at the value of the fixtures, except in two or three stores, and those were fixtures that were not supplied by the Weber Showcase Company. However, there were other fixtures in the stores, like dress forms, and window fixtures, sundry fixtures, they might be termed, and typewriters, adding machines, and things of that kind, and some of those, I think, were bought on the installment plan, and title to the greater part of that stuff had never been obtained.

Q. It states in this letter of the Weber Showcase and Fixture Company: "Our claim was probably one of the largest in this matter, being for $35,000." Does that mean that that is the amount that they claimed was still owing upon the contracts?

A. Yes. If I am not mistaken, they supplied in

(Testimony of A. F. Lieurance.)

the neighborhood of $67,000 or $70,000 worth of equipment; maybe $65,000 or $60,000,—I don't remember just what the amount was.

That equipment was sold with the stores; that is, only the [340] right, title and interest of the Pilcher Company, whatever it was. So that the purchaser was able to go ahead and keep the contract if he could make his settlement with the Weber Showcase Company or whoever else might have had a lien on the equipment. We sold only the right, title and interest of the Pilcher Company and did not attempt to designate that interest.

Although the title remained in the Weber Showcase & Fixture Company, they claimed that they had a claim against the Pilcher Company; their lease contracts so read. As to all the equipment that they had supplied ot the Pilcher Co., title to all of it remained in the Weber Showcase Company until it was all paid for.

Q. They could take it back, but they could not have any claim for any balance due against the Pilcher Company under your contracts with them?

A. I think they could have taken it back; they could have taken all of it.

Q. Did not Mr. Eliassen advise you that they would not have any further claim against the Pilcher Company? A. I don't know.

The MASTER.—Q. Were their claims allowed?

A. Their claims were reduced.

Q. By how much? A. $16,000.

Q. Their claim was cut in two?

(Testimony of A. F. Lieurance.)

A. It was cut in two. After they came up here and took it before a master, during the proceedings, and at lunch-time, I had a talk with the attorney and the secretary of the Weber Showcase Company, and explained to them that we had received bids on that furniture in the event that we could deliver it, in the event the title could be obtained, we had received bids aggregating $15,000. These bids were received over and above the amount that the stores brought. We could not give title to the fixtures, because the Weber Showcase Company would not give us the title. I told them that in fairness to the creditors, and in fairness to me, that their account, if they were going to exercise the option in their contracts to replevin [341] these fixtures—that their account should be reduced the amount I could have gotten for those fixtures, and they obligingly did that, and said they thought it was fair and right, that they had stood in the way of our getting any money out of these fixtures, and they reduced the account, cutting off $16,000, and came in as general creditors for $16,000, on which they were paid approximately $8,000 on a $35,000 claim.

Mr. HENEY.—Q. They were not entitled to come in legally as general creditors of the estate. Did not Mr. Eliassen so advise you?

A. No, sir, I think they were entitled to come in.

Q. Did Mr. Eliassen so advise you? A. No.

(After a discussion by counsel concerning the contracts above mentioned and Mr. Eliassen's ad-

(Testimony of A. F. Lieurance.)

vice concerning them, the following proceedings took place:)

The MASTER.—I don't see any particular importance about this. As a matter of fact, I don't give any particular weight to the letters you are cross-examining him on now, Mr. Heney, because I will take it for granted that some were pleased and some were not pleased.

Mr. HENEY.—I thank your Honor for expressing yourself on that. I felt that it was taking up more time that its importance demanded.

Cross-examination of Witness LIEURANCE by Mr. HENEY (Resumed).

Q. Now, on the question of those leases for those different stores, did Mr. Eliassen advise you that the lessors might have a right that they could subsequently enforce against Pilcher & Co., but that they had no right against the assets of Pilcher & Co. which were in the hands of the Receiver, except for so much of the rent as had already accrued?

A. My understanding about the leases was that they could file a claim for any unearned rent against the estate.

Q. Did Mr. Eliassen so advise you? [342]

A. Mr. Heney, we have had a number of conferences and conversations about the leases, and the leases individually; to just state that I have been advised this or that, I would not want to do that. I have given you the general impression that I got,

(Testimony of A. F. Lieurance.)

and the general conclusion from our conversations, with regard to the leases.

We have not the leases. They were turned over to the purchasers of the stores. I have not copies of them. We sold whatever right, title and interest there was. There was not much interest in the leases. I was not the only one that did not consider the equity in the leases very valuable.

I am informed that Mr. Pilcher was employed to assist the receivership, by the Creditors' Committee. That is a matter of record in the minutes of the meeting of the Creditors' Committee in New York, I did not personally employ him. I stopped his pay, when he came out here, and I learned something about the affair from him and from Mr. Ernst.

I said that I have a store at Ukiah. At the time I took this receivership, I was contemplating starting some more stores; I am still contemplating it.

Q. Did you entertain the idea that possibly some of those stores might be available to you?

A. No, I did not entertain that idea. I have been spoken to a number of times about that, and could have been a partner of Mr. Pilcher when he started this venture if I had wanted to be.

Mr. Pilcher was employed at one time by the Penney Company. He was a stockholder in that company. He was there with me about four years. He was there even after I left New York and came west. He was there for some little time. I don't

(Testimony of A. F. Lieurance.)

know how long he was with the Penney Company, exactly, but five or six years, roughly.

The ranch that I have is comprised of 617 acres of land, all under cultivation; about 500 head of hogs, about 150 or 160 acres of alfalfa, 108 acres of almonds. [343]

Q. Did you go near that during this time?

A. (Continuing.) Also $7,000 or $8,000 worth of Prince of Wales sheep

Q. Didn't you go near that during these five or six months?

A. I have been there about three or four times, Mr. Heney. I conduct the ranch with a manager and I always have.

Q. I suppose you have a good, competent man?

A. He is fairly capable as a farmer. He is not such a whiz as a business man. He is all right running the dirt end of it.

Q. Do you look after the sale of products?

A. I have, except last year, I was not at home, I was away on the Pilcher Company business. I am sorry that I was away, extremely so.

Q. You didn't look out for it last year?

A. No, and as a result I am a loser to the amount of about $5,000.

Q. You didn't have prunes, did you?

A. No. This year I sold the product myself and I am much happier over the result. And also the previous year I did the same thing. It is a hazardous business at the best, I can assure you of that.

(Testimony of A. F. Lieurance.)

Redirect Examination by Mr. CROSBY.

I accompanied Mr. Eliassen into the various jurisdictions when applications were made for temporary allowances. We went into the courts in the ancillary jurisdictions, to ask for allowances on account to the attorney and the Receivers, and went through with what I suppose is the regular form of proceeding in the matter in court. I was put on the witness-stand by Mr. Eliassen and asked a number of questions, whether I was the Receiver, and if I qualified, and if the report was true. I suppose that is the natural course of such things. I could not repeat it all, word for word, but that is the nature of it. Included in this was the application to pay a dividend of 40 per cent. The Court asked about what amount of money there was on hand, and whether or not we could safely pay that large a dividend, and asked a number of questions in regard to the condition of the estate, and how the receivership was progressing, and [344] took whatever interest the Court felt was necessary. They asked how much compensation the attorneys and the Receivers were asking for on account. When that question has been asked me I have said, without exception, that that is a matter that is to be left entirely to the discretion of the Court, whatever seems to the Court fair and equitable is all right. In Judge St. Sure's court, after the preliminary part of the presentation of the report, and the asking for the allowances, etc., the Court asked how much we were asking for, and Mr. Eliassen

(Testimony of A. F. Lieurance.)

told him that that was a matter to be left to the discretion of the Court. As I remember it, the Judge asked if an allowance had been made in any other jurisdiction, and Mr. Eliassen replied there had not been, but that an application had been made for an allowance on account in New York. He asked what the amount was, and Mr. Eliassen said $10,000. The Court said, "I will make an order to that effect, if that is satisfactory." Mr. Eliassen said: "Anything that satisfies the Court." I was asked how much I was asking for. I said to the Court that this was a matter to be heard in four jurisdictions, that I had set no figure, and that it was a matter to be left to the Court. He said he understood that. So he said, "$10,000 to the receiver." I asked him what division he would make of that, that I had done all the work in the western jurisdictions, and Mr. Gotthold had done none of it. He said, "Why not split it 50-50?" I said, "Do you think that would be fair?" After some hesitation he said, "No, make it 75 and 25." That ended the conversation, or, rather, that ended the hearing. I don't think there was anything else after that. The order was made and that was the end of it. We went to Portland. Judge Bean was not at home; he was away, and would not be back for some three or four days, or whatever time it was. We made an appointment there at that particular time to see him a subsequent date. We proceeded to Spokane. We had a hearing before Judge Webster. Judge Webster asked how much

(Testimony of A. F. Lieurance.)

we were asking for, [345] after he had approved the payment of the 40 per cent dividend, and I told him that that was a matter that was to be left entirely to the Court. I emphasized that fact. He said he understood that. He commented upon the result of the administration, and said that he was ready to fix the fee, and pressed me for an answer as to how much I would expect. I repeated that that was a matter that was to be left to the Court, whatever to the Court seemed fair and equitable would be satisfactory. He said, "You must have some idea what the services are worth." I said to him, "This is a matter of allowance on account, as I understand it." He said, "Well, what would you charge for the services?" I said, "If I were setting a fee I would set it at 5 per cent of the gross sales for the services of the receivership." He asked some questions regarding whether or not it was to be final, or how much more work there would be, and I told him I didn't know, but so far as I knew the next dividend could be paid and the matter closed up. He said he thought that was fair and right, and made the allowance. We proceeded to Seattle, and Judge Neterer—

The MASTER.—Q. At Spokane, was anything said about Mr. Eliassen's fee?

A. Mr. Eliassen said to the Court, whatever the Court felt was right and fair would be all right. There was the same procedure that had taken place in San Francisco here. That was followed substantially.